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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047383
Party	Defendant BRACE INTERNATIONAL, INC.
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Attachments	Brace International's Motion for Summary Judgment.pdf (16 pages)(780728 bytes) Brace Exhibit 1.pdf (2 pages)(39946 bytes) Brace Exhibit 2.pdf (29 pages)(1393767 bytes) Brace Exhibit 3.pdf (32 pages)(1409785 bytes) Brace Exhibit 4.pdf (2 pages)(54660 bytes) Brace Exhibit 5.pdf (5 pages)(182766 bytes) Brace Exhibit 6.pdf (3 pages)(76704 bytes) Brace Exhibit 7.pdf (2 pages)(39918 bytes) Brace Exhibit 8.pdf (8 pages)(318322 bytes) Brace Exhibit 9.pdf (3 pages)(98720 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND APPEAL BOARD**

SAWATACON LIMITED and)	
THOMAS M. SAWA,)	
)	
Petitioners,)	
)	
v.)	Cancellation No. 92047383
)	
BRACE INTERNATIONAL, INC.)	
)	
Registrant.)	
_____)	

REGISTRANT BRACE INTERNATIONAL INC.'S
MOTION FOR SUMMARY JUDGMENT

Registrant Brace International, Inc. ("Brace"), by and through its undersigned counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure, TTAB Manual of Procedure §528, hereby submits its Motion for Summary Judgment. For the reasons explained in this motion, there is no triable issue as to any material fact regarding Brace's entitlement to summary judgment on the basis of res judicata.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND BRIEF STATEMENT OF FACTS

Under the doctrine of res judicata, Petitioners Sawatacon Limited (“Sawatacon”) and Thomas Sawa (“Sawa”) (collectively “Petitioners”) are precluded from bringing an identical claim against an identical trademark registration after the Trademark Trial and Appeal Board (“Board”) entered judgment in Brace’s favor in a previous cancellation attempt by Sawatacon arising from the same set of facts.

Moving party Brace is the owner and registrant of incontestable U.S. Trademark Registration No. 1,977,928 for the mark “SAWA” in International Class 10 for orthopedic braces (hereinafter the “’928 Registration”). Sawatacon and Sawa initiated the current cancellation proceeding against Brace to cancel the ‘928 Registration.

Both Brace and Sawatacon were adverse parties in a prior Board proceeding, TTAB Cancellation No. 92032081, which was initiated by Sawatacon against the same ‘928 Registration (hereinafter the “Prior Cancellation Proceeding”). After Sawatacon’s counsel withdrew from representing Sawatacon, Sawa represented Sawatacon in the Prior Cancellation Proceeding.

The Prior Cancellation Proceeding resulted in a judgment being entered against Sawatacon precluding Sawatacon’s subsequent attempts to cancel the ‘928 Registration (hereinafter the “Prior Judgment”). Likewise, because Sawa alleged his personal claims in the Prior Cancellation Proceeding, he too has had his bite at the apple of justice and is bound by the Prior Judgment.

Sawa’s and Sawatacon’s pending cancellation proceeding, which again seeks to cancel the ‘928 Registration, has been barred by the Prior Judgment in the Prior Cancellation Proceeding based on the principles of res judicata. Registrant, therefore, respectfully requests

that the Board grant its Motion for Summary Judgment and deny Petitioners' request to cancel the '928 Registration.

II. STATEMENT OF RELEVANT FACTS

A. The Parties

Registrant Brace is a Georgia corporation and the owner of United States Trademark Registration No 1,977,928 for the mark "SAWA" for orthopedic braces in International Class 10. *See* United States Trademark Registration No. 1,977,928, a copy of which is attached as Exhibit

1. The '928 Registration is the subject of this cancellation proceeding.

Petitioner Sawatacon is a company organized under and existing under the laws of the country of Canada. *See* First Petition for cancellation filed on June 4, 2001, a copy of which is attached as Exhibit 2 (hereinafter, the "First Petition"). Petitioner Sawa is a Canadian citizen and is the President of Petitioner Sawatacon. *See* First Petition at ¶10.

This proceeding is a repeat of a prior failed attempt by Sawatacon and Sawa to cancel the '928 Registration.

B. Prior Cancellation Proceeding

On June 4, 2001, Sawatacon filed a petition to cancel U.S. Trademark Registration No. 1,977,928 for the mark "SAWA" for orthopedic braces. Sawatacon alleged:

Upon information and belief, Brace International, Inc.'s U.S. Trademark Registration No. 1,977,928 for the mark "SAWA" was obtained fraudulently, in view of the President of Brace International, Inc., Mr. Robert R. Dreesch, signing his name on January 1, 1995 stating that he believes Brace International to be the owner of the mark to be registered and no other corporation has the right to use the mark in commerce, despite his personal knowledge of Petitioner's prior rights in and to the mark "SAWA." Specifically, Mr. Robert R. Dreesch signed his name to the following declaration for the SAWA declaration for the SAWA application filed January 31, 1995:

"The undersigned, ROBERT R. DREESCH, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of

the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that he is the president of applicant corporation; he believes said corporation to be the owner of the Trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the services of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his knowledge are true and all statements made on information and belief are believed to be true.”

See Exhibit 2 hereto, ¶ 8.

On July 19, 2004, counsel for Sawatacon filed a Permissive Request the Withdraw from Representation based on Sawatacon’s failure to pay one year of legal fees in the amount of \$9,769.05. See Exhibit 3 attached hereto. On August 3, 2004, Sawa sent a letter to the Board informing the Board that he would represent *himself*. See Exhibit 4 attached hereto.

On August 17, 2004, the Board issued a decision that:

On August 12, 2004, Dr. Thomas M. Sawa filed a request to represent “himself” but Dr. Sawa does not indicate that he is authorized to represent petitioner [Sawatacon]. Inasmuch as petitioner is a corporation or other legal entity, Dr. Sawa must indicate his capacity to act on behalf of the corporation. See Trademark Rules 2.119(e) and 10.14(e)(2).

See Exhibit 5 attached hereto.

The Board allowed Sawa twenty (20) days to file a statement indicating his capacity to act on behalf of Sawatacon. See Exhibit 5 attached hereto. After Sawa failed to file a proper response¹, the Board issued an Order to Show Cause why Sawatacon’s failure to comply with the

¹ In its Order to Show Cause of April 19, 2005, the Board stated:

Petitioner’s communication (filed March 1, 2005) has not been considered because it does not indicate proof of service of a copy of same on counsel for respondent as required by Trademark Rule 2.119 and because it merely asks for a status update. To the extent petitioner intended the communication to serve as its response to respondent’s motion, we have not considered it because it was not timely filed. See Trademark Rule 2.127(a).

See Exhibit 6.

Board's August 17, 2004 Order should not be considered a concession of the case. *See* Exhibit 6 attached hereto.

Following Sawatacon's failure to respond to the Board's April 19, 2005 Order, on June 3, 2005, the Board entered judgment against Sawatacon and denied its petitioner for cancellation. *See* Exhibit 7 attached hereto.

On July 26, 2004, June 1, 2005, and July 11, 2005, Sawatacon submitted letters to the Board, which the Board considered in an Order of October 31, 2005. *See* Exhibit 8 attached hereto. In this Order, the Board noted that Sawa, as the representative of Sawatacon, failed to follow proper Board procedures or comply with the Orders of the Board. *See id.* In addition, the Board stated that, despite the Board's resetting of the testimony period, Sawatacon did not enter any evidence or testimony onto the record during the testimony period. *Id.*, pp. 3-4. As a result, the Board upheld its judgment in favor of Brace. *Id.*, p. 7.

C. Pending Cancellation Proceeding

Despite the entry of judgment against Sawatacon over two years ago in the Prior Cancellation Proceeding, on April 12, 2007, Sawa filed with the Board a letter with the word "PLEADING" appearing at the top of the page. *See* Petition for Cancellation filed April 12, 2007 (hereinafter "Second Petition"). In this Second Petition, Sawa alleged that "Mr. Dreesch, by way of Declaration, has signed on at least two occasions that he knows of no conflict with the name SAWA and that he is the rightful owner of this designation." *See id.* Sawa concluded in his letter that "it is my position that Mr. Dreesch has fraudulently obtained ownership of the SAWA trademark." *Id.*

On June 27, 2007, in order to protect its rights, Brace filed an Answer to the Second Petition. *See* Answer filed June 27, 2007 (hereinafter "Second Answer"). No other pleadings

have been filed in the pending cancellation proceeding, nor has discovery been served by either party.

III. RELEVANT LAW AND DISCUSSION

A. Governing Legal Standards

A party is entitled to summary judgment when it has demonstrated that there are no genuine issues as to any material fact, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986).

The Federal Courts and the TTAB have recognized that “summary judgment is a salutary method of disposition designed to secure the just, speedy and inexpensive determination of every action. *Sweats Fashion, Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987); *see Turner Entm’t Co. v. Nelson*, 38 U.S.P.Q.2d 1942, 1944 (T.T.A.B. 1996) (“the purpose of summary judgment is one of judicial economy, that is, to save the time and expense of a useless trial.”)

The doctrine of res judicata or claim preclusion serves to preclude a party from relitigating the same claim in a subsequent proceeding involving the same parties or their privies based on an entry of a final judgment on the merits in a proceeding, even if the prior judgment was a result of a default or consent. *See Lawlor v. Nat’l Screen Service, Corp.*, 349 U.S. 322, 75 S. Ct. 865 (1955). For the doctrine of res judicata to apply, there must be: (1) the same identity of parties or their privies for the first and second claim; (2) the second claim must be based on the same transactional facts as the first; and (3) a final judgment on the merits of the prior claim. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 327 n.5 (1979); *Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1362 (Fed. Cir. 2000). As discussed below, all three elements are met in this proceeding and Brace is therefore entitled to summary judgment in its favor.

B. Discussion of Law and Relevant Facts

Petitioners are precluded from petitioning to cancel the '928 Trademark Registration based on principles of res judicata. Petitioners previously brought a cancellation proceeding against the identical trademark registration. Judgment was entered against Sawatacon. The prior Board judgment issued against Sawatacon bars the relitigation by Petitioners of the validity of Brace's ownership of the '928 Registration.

1. The parties in the Prior Cancellation Proceeding and Pending Cancellation Proceeding are identical.

The Prior Cancellation Proceeding involved the same parties as the pending cancellation proceeding, TTAB Cancellation No. 92047383.

(A) Brace is the registrant of the '928 Registration, which was the subject of the Prior Cancellation Proceeding and is the subject of the Pending Cancellation Proceeding

The trademark registration at issue in the Prior Cancellation Proceeding and the Pending Cancellation Proceeding is identical – the '928 Registration. The registration information, including the identity of the trademark registrant – Brace – has not changed since the filing of the First Petition. As a result, the registrant in the prior and current proceedings is identical.

(B) Sawatacon was a petitioner in the Prior Cancellation Proceeding and the Pending Cancellation Proceeding; Sawa is a privy of Sawatacon.

Sawatacon was a party to both the Prior Cancellation Proceeding and the Pending Cancellation Proceeding. *See* First Petition; Second Petition. As a result, with respect to Sawatacon, the res judicata element that the parties be identical is clearly met.

Sawa, a named party only to the Pending Cancellation Proceeding, is in privity with Sawatacon, and therefore is also precluded from bringing the Pending Cancellation Proceeding under the principles of res judicata. The law is very clear that an individual who is the president, majority stockholder, and makes ultimate decisions for the company for the direction of a lawsuit is a privy of the company. *See Drier v. Tarpon Oil Co.*, 522 F.2d 199, 200 (5th Cir. 1975).

Here, Sawa is the President of Sawatacon. *See* First Petition at ¶ 10. Sawa was intimately involved in the Prior Cancellation Proceeding. In fact, the First Petition filed by Sawatacon clearly included personal claims of Sawa in addition to the claims of Sawatacon. Most notably, in the First Petition, Sawatacon alleged:

10. Upon information and belief, Brace International, Inc. obtained U.S. Trademark Registration No. 1,977,928 for the “SAWA” mark contrary to 15 U.S.C. § 1052(c), Trademark Act Sec. 2(c), because the mark “SAWA” “consists of or comprises a name, portrait or signature identifying a particular individual,” *specifically, Dr. Thomas M. Sawa*, president of Petitioner, and U.S. Registration No. 1,977,928 for “SAWA” was obtained *without Dr. Thomas M. Sawa’s written consent*.

11. If Registrant is permitted to retain U.S. Trademark Registration No. 1,977,928 for “SAWA” *despite not obtaining Dr. Thomas M. Sawa’s written consent*, Petitioner’s right to exclusive use of its “SAWA” mark will be impaired and Petitioner will be damaged.

First Petition at ¶¶ 10-11 (emphasis supplied).

As demonstrated above, the claims of the Prior Cancellation Proceeding related not only to Sawatacon, but also to Sawa personally. Specifically, Sawatacon alleged, on Sawa’s behalf, that the “SAWA” mark should not be registered without Dr. Thomas M. Sawa’s written consent. Moreover, after Sawatacon’s counsel withdrew from representing Sawatacon, Sawa signed pleadings on behalf of Sawatacon and sent numerous letters to the Board on Sawatacon’s behalf. Hence, there can be no issue of fact with respect to Sawa’s status as a party in privity bound by the Judgment in the Prior Cancellation Proceeding. As a result, Sawa stands in the shoes of Sawatacon and is barred, under the doctrine of res judicata, from relitigating the merits of his and Sawatacon’s claims against Brace.

2. **The Prior Cancellation Proceeding and Pending Cancellation Proceeding involve the same trademark registration and same claims by Sawa and Sawatacon against the trademark registration.**

(A) **The ‘928 Registration was the subject of the Prior Cancellation Proceeding and is the subject of the Pending Cancellation Proceeding.**

The Prior Cancellation Proceeding and Pending Cancellation Proceeding both involve the '928 Registration. There have been no amendments to the '928 Registration between the filing of the Prior Cancellation Proceeding and the filing of the Pending Cancellation Proceeding.

A Notice of Acceptance of Brace's Section 8 Affidavit and a Notice of Renewal were issued by the Patent and Trademark Office on March 20, 2007 relative to the '928 Registration. *See* Exhibit 9 attached hereto. For the purposes of applying the doctrine of res judicata, these filings do not change the analysis of the legal issues since the Renewal and Section 8 Affidavit did not involve an amendment of the description of goods.

(B) Sawatacon's claims Against Brace in the Prior Cancellation Proceeding and in the Pending Cancellation Proceeding are the same.

Sawa and Sawatacon allege the same facts in the First Petition and Second Petition. Briefly, Sawa and Sawatacon allege that Sawatacon and Brace entered into a licensing agreement for the manufacturing and distribution in the United States of an orthopedic brace. *See* First Petition at ¶ 4; Second Petition. Sawa and Sawatacon allege that as a result of the license agreement, Brace's use of the "SAWA" mark in the United States constituted use by Sawatacon. *See* First Petition at ¶ 14; Second Petition.

Furthermore, Petitioners have alleged claims in the First Petition and Second Petition. Briefly, the basis of Petitioners' claims is that the "SAWA" mark is a surname and is allegedly owned by Sawatacon. *See* First Petition at ¶¶ 7, 10; Second Petition. As a result, Petitioners allege that Brace's declarations in support of the '928 Registration are fraudulent. *See* First Petition at ¶ 8, Second Petition.

Regardless of the veracity and legal accuracy of Petitioners' allegations and claims, it is indisputable that the facts alleged in the First Petition and Second Petition arise from the *very same transaction* between Sawatacon and Brace. Petitioners have not alleged any new facts in

the Second Petition, except that Brace filed a Renewal of the '928 Registration. But Petitioners' claim that the Renewal declaration was signed fraudulently is *based on the same facts* as their claim that the Application declaration was signed fraudulently. Therefore, the issues are identical. Since a judgment was entered against Sawatacon on this issue in the Prior Cancellation Proceeding, the doctrine of res judicata bars the assertion of identical claims in this proceeding.

Moreover, assuming, arguendo, that any of Petitioners claims in the Second Petition are new, Petitioners are still precluded from arguing these claims because they easily could have been raised in the Prior Cancellation Proceeding. *See International Nutrition Co. v. Horphag Research, Ltd.*, 220 F.3d 1325, 1328 (Fed. Cir. 2000). Because the transaction giving rise to Petitioners' claims has not changed, any claims arising from this transaction existed at the time of the First Petition. Hence, Petitioners have not alleged any newly discovered facts in relation to the trademark at issue in this proceeding and the doctrine of res judicata must bar these claims.

3. A final judgment was rendered in the Prior Cancellation Proceeding.

Brace obtained a final judgment against Sawatacon in the Prior Cancellation Proceeding on June 3, 2005. *See* Exhibit 7 attached hereto. As enumerated in its October 31, 2005 Order, the Board entered this Judgment in Brace's favor for two reasons. First, although Sawa informed the Board that he would represent Sawatacon in the matter, his letter did not show proof of service of a copy of the letter on Brace. *See* Exhibit 8 hereto at p. 2. Second, Sawa did not indicate his capacity to represent Sawatacon in the proceeding. *See* Exhibit 8 hereto at pp. 2-3. As a result, the testimony period was not reopened and judgment was entered in favor of Brace.

Although Petitioners may attempt to argue otherwise, the Judgment entered in favor of Brace in the Prior Cancellation Proceeding was not a simple default judgment. Sawatacon participated in the Prior Cancellation Proceeding throughout its testimony period. As a result,

Sawatacon did not default in the proceeding. Rather, Sawatacon did not take any testimony during its period and therefore could not meet its burden to sustain the opposition. As a result, Sawatacon lost the proceeding on the merits of the case.

Even if, however, the Judgment were construed as a type of default judgment, Brace is still entitled to judgment on the basis of res judicata since a default judgment *can* give rise to a claim for res judicata. See *International Nutrition Co. v. Horphag Research, Ltd.*, 220 F.3d 1325, 1329 (Fed. Cir. 2000) (holding that International Nutrition Company could not avoid being barred by claim preclusion based on a lack of a judgment on the merits); see also *Bass Anglers Sportsman Soc'y v. Bass Pro Lures, Inc.*, 200 U.S.P.Q. 819 (T.T.A.B. 1978) (holding that a default has the same effect as a judgment on the merits). As a result, Sawatacon, and its privy Sawa, are barred from relitigating the matter under the doctrine of res judicata.

IV. CONCLUSION

Petitioners attempted to cancel Brace's trademark registration for approximately four years during the period June 4, 2001 to June 3, 2005. After spending thousands and thousands of dollars to litigate the matter over those four years, Brace succeeded in obtaining the judgment in its favor. Less than three years later, Sawatacon, and its president Thomas Sawa, have asked for a second bite at the apple of justice by filing another cancellation proceeding, this time *pro se*, against the exact same trademark registration involving the exact same instances of alleged fraud allegedly committed by Brace.

Under the Trademark Board Manual of Procedure, there is no clear cut mechanism that prevents an unsuccessful petitioner, in this case Sawatacon and Sawa, from continually petitioning to cancel the same trademark registration, thereby causing the trademark owner unnecessary burden and expense. This is why the doctrine of res judicata must be applied not

only to protect trademark owners from harassment and undue expense, but to encourage judicial economy.

Brace has owned the registration in question for over ten (10) years and has demonstrated to the Patent and Trademark Office that the “SAWA” mark has acquired a secondary meaning in relation to Brace’s goods. In the absence of res judicata and its proper application by the Board, petitioners such as Sawa and Sawatacon, would be given the power to harass trademark registrants to the point that trademark ownership becomes a detriment rather than a benefit. This would not advance the intended purpose of trademarks, which is to protect the public from consumer confusion. Rather, it would make trademark ownership uncertain and burdensome, and thus undesirable.

Sawa sent letter after letter to the Board regarding this matter. Time after time, Sawa has failed to follow proper Board procedure, and has continued to waste the Board’s valuable time. Despite several indulgences granted by the Board, Sawa, individually and as counsel for Sawatacon, failed to act with even the most modest level of prudence in abiding by the Board’s well-established rules and procedure. Furthermore, given the opportunity to present testimony during its testimony period, Sawatacon elected not to do so, and, as a result, failed to prove its case against Brace.

Given all of these indisputable facts, Petitioners should be barred from bringing this cancellation proceeding and any future cancellation proceedings against Brace’s trademark registration for the “SAWA” mark arising out of the same transactions and occurrences referenced in this Prior Cancellation Proceeding and the Pending Cancellation Proceeding. Accordingly, judgment should be entered in favor of Brace and this opposition proceeding should be dismissed.

WHEREFORE, Registrant respectfully requests that the Board grant this motion for summary judgment, and that Petitioners be denied all relief requested in their Petition for Cancellation.

DATED this 18th day of October, 2007.

Respectfully submitted,
GREENBERG TRAURIG LLP

By: Joel R. Feldman
Jennifer B. Moore, Esq.
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Attorneys for BRACE INTERNATIONAL, INC.

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that Registrant's Motion for Summary Judgment is being electronically transmitted to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514 through the TEAS electronic filing system on October 18, 2007.

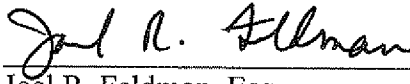
Joel R. Feldman
Joel R. Feldman, Esq.

CERTIFICATE OF SERVICE

I hereby certify that this **REGISTRANT BRACE INTERNATIONAL INC.'S
MOTION FOR SUMMARY JUDGMENT**, is being deposited with the U.S. Postal
Service in a sealed envelope as first class mail with postage fully prepaid addressed to:

Thomas Sawa, President
Sawatacon Limited
2087 Dundas Street East Unit 102
Mississauga, ON L4X 1M2

This 18th day of October, 2007


Joel R. Feldman, Esq.

EXHIBIT

1

Int. Cl.: 10

Prior U.S. Cls.: 26, 39 and 44

United States Patent and Trademark Office

Reg. No. 1,977,928

Registered June 4, 1996

**TRADEMARK
PRINCIPAL REGISTER**

SAWA

**BRACE INTERNATIONAL, INC. (GEORGIA
CORPORATION)
1413 B WOODMONT LANE
ATLANTA, GA 30318**

**FOR: ORTHOPEDIC BRACE, IN CLASS 10
(U.S. CLS. 26, 39 AND 44).**

**FIRST USE 3-0-1989; IN COMMERCE
3-0-1989.
SEC. 2(F).**

SER. NO. 74-627,776, FILED 1-31-1995.

FRED MANDIR, EXAMINING ATTORNEY

EXHIBIT

2

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 1,977,928
For the Mark "SAWA"
Date Registered: June 4, 1996



06-04-2001

U.S. Patent & TMO/TM Mail RptDt #11

SAWATACON LIMITED,)
)
Petitioner,)
)
v.)
)
BRACE INTERNATIONAL, INC.,)
)
Registrant.)

Petition No. 32081

PETITION TO CANCEL

Petitioner, Sawatacon Limited, a company organized and existing under the laws of the country of Canada, and having a place of business at 2087 Dundas Street East, Suite 102, Mississauga, Ontario, L4X 2V7, Canada, believes that it is damaged by U.S. Registration No. 1,977,928 for the mark "SAWA" for "orthopedic braces" and hereby petitions to cancel the same under 15 U.S.C. § 1064, Trademark Act Section 14.

"EXPRESS MAIL" MAILING LABEL NUMBER: EL686045042
DATE OF DEPOSIT: June 4, 2001

I HEREBY CERTIFY THAT THIS PAPER OR FEE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE
"EXPRESS MAIL POST OFFICE TO ADDRESSEE" SERVICE
UNDER 37 CFR 1.10 ON THE DATE INDICATED ABOVE AND
IS ADDRESSED TO THE ASSISTANT COMMISSIONER FOR
TRADEMARKS, BOX TTAB FEE, 2009 CRYSTAL DRIVE,
ARLINGTON, VIRGINIA 22202-3513.

TYPED OR PRINTED NAME: KATHLEEN BUSSELL

SIGNATURE: Kathleen Buswell

As grounds for this Petition to Cancel, Petitioner alleges:

1. Petitioner's filing of this Petition to Cancel is timely pursuant to 37 C.F.R. §2.111.
2. Petitioner has, starting at least as early as January 9, 1989, sold orthopedic braces under the mark "SAWA" in the United States.

3. Petitioner adopted the mark "SAWA", as well as its company name, Sawatacon Limited, as a direct reference to Dr. Thomas M. Sawa, the inventor of the SAWA orthopedic brace, and inventor of the brace covered by U.S. Patent No. 4,735,198.

4. Petitioner entered an exclusive license arrangement with Andre Dreesch and Robert Dreesch d/b/a Brace International on November 13, 1989 for sale of the "SAWA" orthopedic braces in the United States. Brace International, Inc. (Registrant) is the successor in interest to Andre Dreesch and Robert Dreesch.

5. Petitioner has devoted substantial time, money and effort in establishing and maintaining a high standard of quality for all products sold under and in connection with the "SAWA" mark. As a consequence, Petitioner's "SAWA" mark has become widely and favorably known to the relevant public. By virtue of the public's recognition of Petitioner's "SAWA" mark, Petitioner has developed substantial goodwill in the mark.

6. Brace International, Inc. is the owner of U.S. Trademark Registration No. 1,977,928 for the mark "SAWA" for "orthopedic brace," said registration claiming a first use date of March 1989 and a first use in commerce date of March 1989.

7. Upon information and belief, because Sawatacon Limited is the owner of the "SAWA" mark, and Brace International, Inc. was only licensed to use the mark "SAWA", and was neither assigned rights in and to the SAWA mark nor given permission to federally register the

SAWA mark, U.S. Trademark Registration No. 1,977,928 was obtained fraudulently by Brace International, Inc.

8. Upon information and belief, Brace International, Inc.'s U.S. Trademark Registration No. 1,977,928 for the mark "SAWA" was obtained fraudulently, in view of the President of Brace International, Inc., Mr. Robert R. Dreesch, signing his name on January 1, 1995 stating that he believes Brace International to be the owner of the mark to be registered and no other corporation has the right to use the mark in commerce, despite his personal knowledge of Petitioner's prior rights in and to the mark "SAWA". Specifically, Mr. Robert R. Dreesch signed his name to the following declaration for the SAWA application filed January 31, 1995:

"The undersigned, ROBERT R. DREESCH, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that he is the president of applicant corporation and is authorized to execute this instrument on behalf of said corporation; he believes said corporation to be the owner of the Trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the services of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true."

A copy of the U.S. Patent and Trademark Office file history for U.S. Registration No. 1,977,928 is enclosed as Appendix A.

9. If Registrant is permitted to retain U.S. Trademark Registration No. 1,977,928 for "SAWA" despite this fraud, Petitioner's right to exclusive use of its "SAWA" mark will be impaired and Petitioner will be damaged.

10. Upon information and belief, Brace International, Inc. obtained U.S. Trademark Registration No. 1,977,928 for the "SAWA" mark contrary to 15 U.S.C. § 1052(c), Trademark Act Sec. 2(c), because the mark "SAWA" "consists of or comprises a name, portrait or signature identifying a particular living individual", specifically, Dr. Thomas M. Sawa, president of Petitioner, and U.S. Registration No. 1,977,928 for "SAWA" was obtained without Dr. Thomas M. Sawa's written consent.

11. If Registrant is permitted to retain U.S. Trademark Registration No. 1,977,928 for "SAWA" despite not obtaining Dr. Thomas M. Sawa's written consent, Petitioner's right to exclusive use of its "SAWA" mark will be impaired and Petitioner will be damaged.

12. Upon information and belief, as a result of the public's association of the "SAWA" mark with Petitioner and Petitioner's prior rights in "SAWA", Registrant's use and registration of the mark "SAWA" in connection with the same goods is likely to cause confusion, mistake or deception.

13. If Registrant is permitted to retain U.S. Trademark Registration No. 1,977,928 for "SAWA" despite this likelihood of confusion, Petitioner's right to exclusive use of its "SAWA" mark will be impaired and Petitioner will be damaged.

14. Upon information and belief, as a result of Petitioner's continuous and uninterrupted use of the mark "SAWA" in the United States by its exclusive licensee, Brace International, Inc., and the resulting public's association of the "SAWA" mark exclusively with Petitioner for orthopedic braces, the mark "SAWA" has become distinctive of Petitioner's orthopedic braces.

15. Petitioner's "SAWA" mark is a famous mark under 15 U.S.C. § 1125(c) for orthopedic braces.

16. If Registrant is permitted to keep registered the "SAWA" mark depicted in U.S. Trademark Registration No. 1,977,928, Registrant's use and registration of "SAWA" will cause dilution of the distinctive quality of Petitioner's "SAWA" mark under 15 U.S.C. § 1125(c).

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and that Registration No. 1,977,928 for "SAWA" be cancelled. A duplicate copy of this Petition to Cancel and the filing fee of \$300.00 is enclosed herewith as required by 37 C.F.R. §§2.111 and 2.6(a)(16).

Respectfully submitted,

SAWATACON LIMITED

Date: 6/4/2001

M:\4736-15-1\Petition to Cancel.wpd

By: 

Sabrina C. Stavish
Miriam D. Trudell
Attorneys for Petitioner
Sheridan Ross P.C.
1560 Broadway, Suite 1200
Denver, Colorado 80202
(303) 863-9700

Appendix A

☐ SAWA
SHOULDER BRACE

☐ BAR-1

☐ SDI

LEFT RIGHT

☐☐

☐ XS

☐ S

☐ M

☐ L

☐ XL

☐ XXL

☐ OTHER

BRACE International

SAWA
Dynamic Braces

BRACE International

P.O. BOX 18721 ATLANTA, GA 30325-0721

800-545-1161

4/4/94

INVOICE NO.

INVOICE

6341

BRACE International

U.S.A. 14020 N. 38th Pl., Phoenix, AZ 85032
(602) 971-1966

SOLD TO Boston Bruins SHIP TO Same

150 Causeway Street

Boston, Ma 02114 Attn: Mr. Jim Narrigan

CUSTOMER'S ORDER	SALESMAN	TERMS	SHIPPED VIA	F.O.B.	DATE
Jim	Robert	N 30 dys	ups Ground	Phoenix	7/2/90
1	Sawa Shoulder Orthosis #14250-05 X-Large Left			\$169.95	\$169.95
3	Supplementary Straps			N/C	N/C
	Shipping & Handling:				3.53
	Total amount due:				\$173.48
Paid in full 8/6/90					
Thank you for your order!					
PO# 14361					

REDIFORM 75724
POLY PAK (50 SETS) 7P724

1. REG. NO. 1,977,928		3. MARK 344A		4. SER. NO. 741627776	
2. REG. DATE 6/4/96				5. REGISTER PRINCIPAL	
6. INTERNATIONAL CLASS 10		7. PRIOR U.S. CLASS 25-57-44		8. FILING DATE 01/31/95	
10. APPLICANT AND POST OFFICE BRACE INTERNATIONAL, INC. 1413 B Woodmont Lane Atlanta, GEORGIA 30318 CORPORATION OF GEORGIA				16. EXAMINING ATTORNEY Mandis	
11. CORRESPONDENCE ADDRESS H. Jay Spiegel P.O. Box 2122 Alexandria, VA 22301				17. TYPE OF MARK TRADEMARK	
				18. FIRST USE ICL 010 03/00/1989	
13. APPLICANT'S ATTORNEY H. Jay Spiegel				19. IN COMMERCE ICL 010 03/00/1989	
				20. FOREIGN REG. AND APPL. DATA	
12. DOMESTIC REPRESENTATIVE					
15. GOODS - SERVICES 10-orthopedic brace					
21. OTHER DATA *section 2(f)*					

PTO-102L (REV. 12/82) U.S. DEPT. OF COMMERCE - PATENT AND TRADEMARK OFFICE

22. AMENDED	PRINCIPAL REGISTER		25. Examiner	
			26. Section 1(C)	
			27. Section 1(C)	
23. AFFIDAVIT	Section 8		28. Approved for Publication	
	Section 15		29. Approved for Supplemental Registration	
24. RENEWAL	Approved for Renewal		30. C.O. Date	
	Renewed From		PUBLISHED MAR 12 1996	

☐ Less Goods

74627776

R



TRADEMARK



74627776

10

NEW CASE DELIVERED

JUN - 9 1995

LAW OFFICE 11

CONTENTS

Entry	Date	Initials
1.		
2.	NOV - 2 1995	<i>RA</i>
3.		<i>9/19/95</i>
4.		<i>8-12-96</i>
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30.		

Int. Cl.: 10

Prior U.S. Cls.: 26, 39 and 44

Reg. No. 1,977,928

United States Patent and Trademark Office Registered June 4, 1996

**TRADEMARK
PRINCIPAL REGISTER**

SAWA

BRACE INTERNATIONAL, INC. (GEORGIA
CORPORATION)
1413 B WOODMONT LANE
ATLANTA, GA 30318

FOR: ORTHOPEDIC BRACE, IN CLASS 10
(U.S. CLS. 26, 39 AND 44).

FIRST USE 3-0-1989; IN COMMERCE
3-0-1989.
SEC. 2(F).

SER. NO. 74-627,776, FILED 1-31-1995.

FRED MANDIR, EXAMINING ATTORNEY



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

FEB. 11, 1996

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
74/627,776

2. Mark:
SAWA

3. Applicant:
BRACE INTERNATIONAL, INC.

4. Publication Date:
MAR. 12, 1996

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a certificate of registration.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained at \$20.00 each for domestic orders, or at \$25.00 each for foreign orders from:

The Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

By direction of the Commissioner.



7
A 2A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of:

BRACE INTERNATIONAL, INC.

LAW OFFICE: 11

Serial Number: 74/627,776

TRADEMARK ATTORNEY:
Fred Mandir

Filed: January 31, 1995

For: SAWA

RESPONSE

The Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sirs:

In response to the outstanding Office Action dated July 8, 1995, for which a statutory period for response of six (6) months was given, kindly amend the subject application as follows:

Kindly amend the application to seek registration under Trademark Act Section 2(f), 15 U.S.C. 1052(f), based upon acquired distinctiveness.

REMARKS

✓
TF
By this Response, the application has been amended to seek registration under Trademark Act Section 2(f), and an appropriate Declaration has been presented, to place this application in immediate condition for publication for opposition.

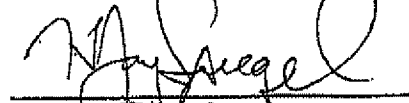
In the outstanding Office Action, the Trademark Attorney has refused registration because, allegedly, the mark is primarily merely a surname and has suggested amending the application to seek registration under Trademark Act Section 2(f) with presentation of the appropriate Declaration.

These steps have been taken in this Response with the Declaration being attached hereto and including the required statement concerning acquisition of distinctiveness.

Accordingly, it is respectfully requested that the Trademark Attorney examine this application and promptly pass it to publication for opposition.

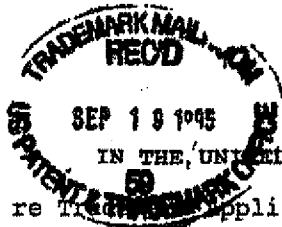
Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES

A handwritten signature in dark ink, appearing to read 'H. Jay Spiegel', is written over a horizontal line.

H. Jay Spiegel
Attorney for Applicant
Registration No. 30,722

H. JAY SPIEGEL & ASSOCIATES
P.O. Box 20202
Alexandria, Virginia 22320
(703) 836-1507



In re ~~Trademark~~ Application of:

BRACE INTERNATIONAL, INC.

LAW OFFICE: 11

Serial Number: 74/627,776

TRADEMARK ATTORNEY:
Fred Mandir

Filed: January 31, 1995

For: SAWA

DECLARATION

The Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

The undersigned, President of Applicant corporation, makes the following declaration:

A. J. Jones
The above-captioned mark has become distinctive of the goods described in the above-captioned United States Trademark application through the Applicant's substantially exclusive and continuous use in commerce for at least five years immediately prior to the date of this statement.

This statement is presented by Applicant for Trademark registration by the undersigned, President thereof, who has authority to sign this Declaration on behalf of said Applicant. The undersigned declares that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true, the undersigned having been warned

that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18 of the United States Code, Section 1001, and may jeopardize the validity of the application or document or any registration resulting therefrom.

Respectfully submitted,

BRACE INTERNATIONAL, INC.


By ROBERT R. DREESCH
President

9/12/95
DATE

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 74/627776		APPLICANT BRACE INTERNATIONAL, INC.	PAPER NO.
MARK GAMA		ACTION NO. 01	ADDRESS: ASSISTANT COMMISSIONER FOR TRADEMARKS 2900 Crystal Drive Arlington, Virginia 22202-3513
ADDRESS H. Jay Spiegel P.O. Box 28202 Alexandria, VA 22320		MAILING DATE 07/08/95	If no fees are enclosed, the address should include the words "Box 5."
FORM PTO-1525 (5-80)		REF. NO.	Please provide in all correspondence: 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this Office action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.
U.S. DEPT. OF COMM. PAT. & TM OFFICE			

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number 74/627776

The assigned examining attorney has reviewed the referenced application and determined the following.

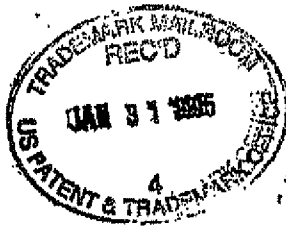
VAD The examining attorney refuses registration on the Principal Register because the mark is primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. Section 1052(e)(4); TMEP section 1211. The examining attorney must consider the primary significance of the mark to the purchasing public to determine whether a term is primarily merely a surname. *In re Kahan & Weisz Jewelry Mfg. Corp.*, 508 F.2d 831, 184 USPQ 421 (CCPA 1975). Please see the attached evidence from PHONEDISC U.S.A., establishing the surname significance of the mark.

/ The application indicates use of the mark for a significant time. Therefore, the applicant may amend to seek registration under Trademark Act Section 2(f), 15 U.S.C. Section 1052(f), based on acquired distinctiveness. If the applicant chooses to do so by using the statutory suggestion of five years of use as proof of distinctiveness, the applicant should submit a claim of distinctiveness that reads as follows, if accurate.

TELEPHONE LISTING SURNAME EVIDENCE

The attached listings of individuals with the surname at issue were obtained from the PHONEDISC U.S.A.® data base (1994 ed.). The data base consists of two discs (CD-ROMS), one for the eastern United States and one for the western United States. The listings making up the data base were gathered from approximately 5,000 U.S. address lists and telephone directories including a total of 76,000,000 listings. The listings may contain a small number of duplicate listings for the same individual when the individual maintains two addresses or moves. The listings omit telephone numbers for unlisted numbers.

The attached evidence indicates the total number of listings (highlighted) found for the surname at issue on each disc. The evidence also includes the actual listings from each of the two discs. If the number of listings on either disc exceeds 100, only the first 100 from that disc are included as representative of the entire listing from that disc.



74627776

Applicant: BRACE INTERNATIONAL, INC.

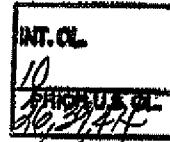
Address: 1413 B Woodmont Lane
Atlanta, Georgia 30318

Mark: SAWA

First Use: At least as early as March, 1989

In Commerce: At least as early as March, 1989

For: An orthopedic brace in Class 10.



SAWA

Attorney: H. Jay Spiegel
P.O. Box 20202
Alexandria, VA 22320
(703) 836-1507

PUBLISHED

MAR 12 1996

of said corporation; he believes said corporation to be the owner of the Trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the services of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Power of Attorney

AT
CA
Applicant hereby appoints H. Jay Spiegel Registration No. 30,722, a member of the Bars of the State of Virginia, and the District of Columbia, whose address is P.O. Box 20202, Alexandria, Virginia, 22320, its duly authorized attorney to prosecute this application to register, to transact all the business in the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration.

BRACE INTERNATIONAL, INC.


By ROBERT R. DREESCH
President

DATE 1/30/95



\$245 30

74627776

MARK: SAWA

To the Commissioner of
Patents and Trademarks:

AA (BRACE INTERNATIONAL, INC. is a ⁰³ corporation^{GA} duly organized under the laws of the State of Georgia its principal business address being 1413 B Woodmont Lane, Atlanta, Georgia 30318/

GS CPD [The above identified applicant has adopted and is using the Trademark shown in the accompanying drawing for an orthopedic brace] in Class 10 and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Trademark Act of July 5, 1946. ^{under Section 2(f)}

INS A [The Trademark was first used in connection with the goods at least as early as March, 1989; was first used in interstate commerce at least as early as March, 1989; and is now in use in such commerce.

The mark is used by applying the same to invoices, packaging and on the goods themselves, and five (5) specimens of the mark as actually used are presented herewith.

The undersigned, ROBERT R. DREESCH, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that he is the president of applicant corporation and is authorized to execute this instrument on behalf



74627776

(703) 898-1807
FACSIMILE: (703) 898-4867
DR II AND III
DISTRICT OF COLUMBIA BAR
VIRGINIA BAR
PATENT BAR

LAW OFFICES OF
H. JAY SPIEGEL & ASSOCIATES
GENERAL CAUSES &
PATENT, TRADEMARK & COPYRIGHT CAUSES
703 KING STREET
KING & WASHINGTON STREETS
OLD TOWN ALEXANDRIA, VIRGINIA 22314
MAIL ADDRESS: P.O. BOX 28302
ALEXANDRIA, VIRGINIA 22320

PARIS CORRESPONDENT
53 AVENUE DE BRETEUIL
PARIS 75007 FRANCE
PHONE: 46 87 01 23
TELEX: 5117 203843F
FACSIMILE: 46 07 25 00

January 31, 1995


The Honorable Commissioner
of Patents and Trademarks
Washington, D.C. 20231

Sir:

Submitted herewith is an application for United States Federal Registration of the trademark "SAWA". Also included are five specimens of the mark, a drawing, and a check in the amount of \$245.00 to cover the filing fee for one Class of Goods.

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES


H. Jay Spiegel
Attorney for the Applicant

HJS:tg
Attachment

SAWA, MARIANNE 2505 KAREN LN HATBORO, PA 19040	215-957-5327
SAWA, MARTIN J 28 SZETELA DR CHICOPEE, MA 01013	413-594-4471
SAWA, MARY 157 MEADOWVIEW DR PITTSFIELD, MA 01201	413-442-1711
SAWA, MICHAEL A 2505 KAREN LN HATBORO, PA 19040	215-957-5327
SAWA, NELLIE 115 BROWN ST WORCESTER, MA 01611	508-892-3606
SAWA, PAMELA 5112 FAIRFAX DR LAKELAND, FL 33813	813-644-9647
SAWA, PRISCILLA 44 LINCOLN ST WINCHESTER, MA 01890	617-721-0196
SAWA, R 1015 LAFAYETTE DR MORRISVILLE, PA 19067	215-493-8878
SAWA, ROBERT 4514 WATER ST WHEELING, WV 26003	304-233-8541
SAWA, ROBERT M 711 GRANBY RD CHICOPEE, MA 01013	413-592-1570
SAWA, ROSEMARY B 75 OTIS ST MELROSE, MA 02176	617-662-6894
SAWA, STANISLAW 133 NASSAU AVE BROOKLYN, NY 11222	718-383-7042
SAWA, STELLA 21 BENOIT CIR #-C CHICOPEE, MA 01020	413-592-2609
SAWA, STELLA 28 SZETELA DR CHICOPEE, MA 01013	413-594-4471
SAWA, SUSAN 23 LEO DR CHICOPEE, MA 01020	413-593-5465
SAWA, TAKANORI 41 BOURNDALE RD ND MANHASSET, NY 11030	516-627-3236
SAWA, THOMAS 3034 ORCHARD DR PALM HARBOR, FL 34684	813-786-7635
SAWA, THOMAS J 119 COLONIAL CIR #-C CHICOPEE, MA 01020	413-598-8428
SAWA, TRAVEL A 586 AVENUE BAYONNE, NJ 07002	201-823-8547
SAWA, WALTER 14531 WALSINGHAM RD LARGO, FL 34644	813-595-3202
SAWA, WALTER S 23 LEO DR CHICOPEE, MA 01020	413-593-5465
SAWA, WILLIAM 157 MEADOWVIEW DR PITTSFIELD, MA 01201	413-442-1711
SAWA, YASUHIKO 349 BOGERT AVE RIDGEWOOD, NJ 07450	201-670-4370

SAWA, THOMAS R 2839 DOLE ST HONOLULU, HI 96816	808-734-0385
SAWA, TINA 6 WILD CHERRY LN PALOS PARK, IL 60464	708-361-6313
SAWA, UTAKO 1012 BERKELEY DR MARINA DEL REY, CA 90292	310-821-6958
SAWA, VALERIE 589 E 73RD AVE GARY, IN 46410	219-769-5129
SAWA, VIRGINIA 3830 S HONORE ST CHICAGO, IL 60609	312-847-3904
SAWA, WALTER J 3145 N KEATING AVE CHICAGO, IL 60641	312-286-4723
SAWA, WANDA 661 CENTRE CT ALAMEDA, CA 94502	510-865-1183
SAWA, WILLIAM M 64 BERNAL RD SAN JOSE, CA 95119	408-225-5668
SAWA, WILSON T 6774 N SAUGANASH AVE CHICAGO, IL 60646	312-774-3144
SAWA, WOJTEK 9121 EWING AVE #-2 EVANSTON, IL 60203	708-673-6772
SAWA, WOJTEK 9121 EWING AVE #-2 EVANSTON, IL 60203	708-673-6772
SAWA, YELDA H 28920 E KING WILLIAM DR FARMINGTON, MI 48331	313-489-8644
SAWA, YONAN 19211 HAVANA ST DETROIT, MI 48203	313-892-6167
SAWA, YONAN 19145 HAVANA ST DETROIT, MI 48203	313-366-7202
SAWA, ZENON B 316 S FREMONT ST PRAIRIE DU CHIEN, WI 53821	608-326-2875

Enter Name: SAWA
 #####(press Tab to limit)#####PHONEDISC USA RESIDENTIAL EAST#####
 # SAWA, WALTER 14531 WALSINGHAM RD LARGO, FL 34644 813-595-3202#
 # SAWA, WALTER S 23 LEO DR CHICOPEE, MA 01020 413-593-5465#
 # SAWA, WILLIAM 157 MEADOWVIEW DR PITTSFIELD, MA 01201 413-442-1711#
 # SAWA, YASUHIKO 349 BOGERT AVE RIDGEWOOD, NJ 07450 201-670-4370#
 # SAWABE, AKIYOSHI 765 SOMERVILLE AVE SOMERVILLE, MA 02143 617-776-4024#
 # SAWABE, KUNIKO 15660 HILLVIEW RD MARYSVILLE, OH 43040 513-644-9739#
 # SAWABE, TETSU#####OH 43040 513-644-9739#
 # SAWABI, ROMAN# Total: 57 #J 07092 908-232-1669#
 # SAWABI, SID K# # 07092 908-232-1669#
 # SAWABINI, CHAN# Residence: 57 #ER, MA 02324 508-697-3543#
 # SAWABINI, DOR# Business: 0 #, MA 02324 508-697-3543#
 # SAWABINI, FRED#####E, TN 37919 615-524-4785#
 # SAWABINI, ISSA 8380 GREENSBORO DR MC#####
 # SAWABINI, JULIA M 40 HENDERSON ST #-2 # SAWA, YASUHIKO #
 # SAWABINI, NABIL G 88 SECOR RD SCARSDALE 349 BOGERT AVE #
 # SAWABINI, NADIA 88 SECOR RD SCARSDALE# RIDGEWOOD, NJ 07450 #
 # SAWABINI, ROBERT V 459 FLAGG ST BRIDGM #
 # SAWABINI, WADI I CHARLOTTE, VT 05445# #
 # SAWADA, ALBA 141-31 73RD AVE FLUSHING# #
 # SAWADA, ATSUSHI 450 S PEACHTREE PKY PM #
 # SAWADA, BEN 205 LAMAR ST TROY, AL 36# 201-670-4370 * Residence * #
 #####
 Press Esc to continue.

SAWA, A H 4514 WATER ST WHEELING, WV 26003 304-233-8541
 SAWA, ALEXANDRA 7816 HARBOR RD PASADENA, MD 21122 410-437-7439
 SAWA, ALFRED 10149 FERNDAL ST PHILADELPHIA, PA 19116 215-464-1161
 SAWA, ANTHONY 3034 ORCHARD DR PALM HARBOR, FL 34684 813-786-7635
 SAWA, ANTHONY F 1021 SW 7TH AVE GAINESVILLE, FL 32601 904-373-7105
 SAWA, B J 429 FAY RD SYRACUSE, NY 13219 315-487-3072
 SAWA, CAROLINE 448 7TH ST DONORA, PA 15033 412-379-6795
 SAWA, CHARLES J 115 BROWN ST WORCESTER, MA 01611 508-892-3606
 SAWA, CHESTER 655 MCKEAN AVE DONORA, PA 15033 412-379-6319
 SAWA, DENISE 119 COLONIAL CIR #-C CHICOPEE, MA 01020 413-598-8428
 SAWA, DONNA 711 GRANBY RD CHICOPEE, MA 01013 413-592-1570
 SAWA, DOROTHY 19 22ND ST MC MECHEN, WV 26040 304-232-6214
 SAWA, E 4 MOUNT WASHINGTON DR CLIFTON, NJ 07013 201-278-8258
 SAWA, EDWARD J 14 WHITNEY ST #-2 WORCESTER, MA 01610 508-753-3858
 SAWA, EDWARD W 25 SUNRISE AVE GRAFTON, MA 01519 508-839-3625
 SAWA, ELLEN 25 SUNRISE AVE GRAFTON, MA 01519 508-839-3625
 SAWA, EUGENE M 651 5TH ST DONORA, PA 15033 412-379-6564
 SAWA, F F 5112 FAIRFAX DR LAKELAND, FL 33813 813-644-9647
 SAWA, FRANCES 14 WHITNEY ST #-2 WORCESTER, MA 01610 508-753-3858
 SAWA, FRANK J 88 THOMPSON AVENUE EXT DONORA, PA 15033 412-379-9160
 SAWA, GLORIA 88 THOMPSON AVENUE EXT DONORA, PA 15033 412-379-9160
 SAWA, GORDON 109 RANCH AVE CLEARWATER, FL 34624 813-535-5121
 SAWA, HEATHER N 10149 FERNDAL ST PHILADELPHIA, PA 19116 215-464-1161
 SAWA, HELEN 655 MCKEAN AVE DONORA, PA 15033 412-379-6319
 SAWA, J P 419 CHEROKEE DR BUTLER, PA 16001 412-285-1577
 SAWA, JAMES P 1420 CENTER AVE #-1417 PITTSBURGH, PA 15219 412-261-6342
 SAWA, JOHN 7816 HARBOR RD PASADENA, MD 21122 410-437-7439
 SAWA, JOHN A 19 22ND ST MC MECHEN, WV 26040 304-232-6214
 SAWA, JOHN J 448 7TH ST DONORA, PA 15033 412-379-6795
 SAWA, JOJI 44 LINCOLN ST WINCHESTER, MA 01890 617-721-0196
 SAWA, JOSEPH W 14531 WALSINGHAM RD #-222 LARGO, FL 34644 813-595-7122
 SAWA, KYMBERLY R 2 FOWLER AVE WESTFIELD, MA 01085 413-562-2211
 SAWA, LOLA J 409 PROSPECT AVE DONORA, PA 15033 412-379-8710
 SAWA, M INDIAN WELLS CT MURRELLS INLET, SC 29576 803-651-1294

SAWA, JEANNE 1335 SUMMIT AVE #-310 OSHKOSH, WI 54901	414-233-0020
SAWA, JOE E 2702 E 14TH ST PUEBLO, CO 81001	719-545-9327
SAWA, JOHN 8534 DARLENE ST WARREN, MI 48093	313-573-4591
SAWA, JOHN C 232 S STATE ROAD 2 VALPARAISO, IN 46383	219-464-8107
SAWA, JOSEPH 340 ELK BLVD DES PLAINES, IL 60016	708-827-2104
SAWA, JOSEPH B 27787 DEQUINDRE RD #-311 MADISON HEIGHTS, MI 48071	313-542-9122
SAWA, JOSEPH S 6002 ROYAL BREEZE SAN ANTONIO, TX 78239	210-657-1818
SAWA, JUDY 11248 WATCHBIRD RD FENTON, MI 48430	313-629-8096
SAWA, JULIA 122 S 9TH ST NEW BADEN, IL 62265	618-588-4762
SAWA, JUNE 94-572 WAIPAHU ST WAIPAHU, HI 96797	808-671-7950
SAWA, KASMER 122 S 9TH ST NEW BADEN, IL 62265	618-588-4762
SAWA, KATHLEEN 710 MIDDLE GLEN DR GARLAND, TX 75043	214-240-0454
SAWA, KAZUTO 1841 PALOLO AVE #-102 HONOLULU, HI 96816	808-737-6453
SAWA, KENNETH F 5120 CALDERA CT RIVERSIDE, CA 92507	909-369-3310
SAWA, KEVIN G 1360 SPINNAKER LN BARTLETT, IL 60103	708-830-6583
SAWA, KOJI KALAHUIPUAA KAMUELA, HI 96743	808-885-6824
SAWA, KOJI 1212 PUNAHOU ST HONOLULU, HI 96826	808-955-3216
SAWA, KORCHI 1100 17TH AVE #-301 SEATTLE, WA 98122	206-325-2598
SAWA, M K 2901 TONTO DR LAKE HAVASU CITY, AZ 86406	602-855-2438
SAWA, MANSOOR 6770 N SAUGANASH AVE CHICAGO, IL 60646	312-763-0228
SAWA, MARY 1425 2ND AVE #-62 CHULA VISTA, CA 91911	619-422-7151
SAWA, MARY 713 BRIERFIELD RD GRANBURY, TX 76048	817-579-0245
SAWA, MARY 5324 S CATHERINE AVE LA GRANGE, IL 60525	708-579-3651
SAWA, MASAI 3434 KAPUHI ST HONOLULU, HI 96815	808-737-2606
SAWA, MASATO 94-511 ULIEO ST WAIPAHU, HI 96797	808-677-8295
SAWA, MICHAEL 668 S OAKWOOD DR GREENWOOD, IN 46142	317-882-9702
SAWA, MOAID 28920 E KING WILLIAM DR FARMINGTON, MI 48331	313-429-8644
SAWA, MOAID 24748 ROOSEVELT CT FARMINGTON, MI 48335	313-442-0558
SAWA, MORITO 94-404 HENE ST WAIPAHU, HI 96797	808-677-5896
SAWA, NADINE 273 STERLING LN BLOOMINGDALE, IL 60108	708-351-4083
SAWA, NAJAT 64 BERNAL RD SAN JOSE, CA 95119	408-225-5668
SAWA, NORA L 273 STERLING LN BLOOMINGDALE, IL 60108	708-351-4083
SAWA, OTILLIA 9838 TERRACE CT W PALOS PARK, IL 60464	708-361-6776
SAWA, PATRICIA 1360 SPINNAKER LN BARTLETT, IL 60103	708-830-6583
SAWA, PATRICIA M 4612 41ST AVE NE SEATTLE, WA 98105	206-522-5476
SAWA, PHILIP 19211 HAVANA ST DETROIT, MI 48203	313-892-6167
SAWA, RAFAT R 21880 INDEPENDENCE DR SOUTHFIELD, MI 48076	313-353-0214
SAWA, ROBERT 609 BURNS ST CAROL STREAM, IL 60188	708-665-7364
SAWA, ROBERT F 11248 WATCHBIRD RD FENTON, MI 48430	313-629-8096
SAWA, ROLAND K 14620 156TH AVE SE RENTON, WA 98059	206-235-0321
SAWA, SANDRA 6002 ROYAL BREEZE SAN ANTONIO, TX 78239	210-657-1818
SAWA, SHARLENE 7003 W SUNNYSIDE AVE CHICAGO, IL 60656	708-457-8614
SAWA, SOPHIE 8534 DARLENE ST WARREN, MI 48093	313-573-4591
SAWA, STANLEY 94-511 ULIEO ST WAIPAHU, HI 96797	808-677-8295
SAWA, STANLEY B 75258 LA CRESTA DR PALM DESERT, CA 92211	619-773-9705
SAWA, STANLEY F 5547 S NORDICA AVE CHICAGO, IL 60638	312-586-1673
SAWA, STANLEY W 5324 S CATHERINE AVE LA GRANGE, IL 60525	708-579-3651
SAWA, STEPHEN F 713 BRIERFIELD RD GRANBURY, TX 76048	817-579-0245
SAWA, STEVEN J RR 2 #-128A TOMAH, WI 54660	608-372-6285
SAWA, STEVEN R 7221 W BIRCHWOOD AVE CHICAGO, IL 60631	312-631-8937
SAWA, STUART A 2707 N SAYRE AVE CHICAGO, IL 60635	312-745-5739
SAWA, STUART A 1701 W CERMAK RD MAYWOOD, IL 60153	708-450-0581
SAWA, SUSAN G 6917 W JONQUIL TER NILES, IL 60714	708-965-0593
SAWA, SUSAN J 534 E 37TH AVE #-24 HOBART, IN 46342	219-962-7577
SAWA, TED J 25937 W ELMWOOD AVE WAUCONDA, IL 60084	708-526-7586
SAWA, TERRY C 10206 BURNET AVE MISSION HILLS, CA 91345	818-893-1351
SAWA, TERRY T 1012 BERKELEY DR MARINA DEL REY, CA 90292	310-821-6958
SAWA, THERESE 25937 W ELMWOOD AVE WAUCONDA, IL 60084	708-526-7586
SAWA, THOMAS 6917 W JONQUIL TER NILES, IL 60714	708-965-0593
SAWA, THOMAS F 3736 W 82ND PL CHICAGO, IL 60652	312-284-6482

Enter Name: SAWA
 (press Tab to limit)#####CPHONEDISC USA WESTERN#####
 WA, YELDA H 28920 E KING WILLIAM DR FARMINGTON, MI 48331 313-489-8644
 WA, YONAN 19211 HAVANA ST DETROIT, MI 48203 313-892-6167
 WA, YONAN 19145 HAVANA ST DETROIT, MI 48203 313-366-7202
 SAWA, ZENON B 316 S FREMONT ST PRAIRIE DU CHIEN, WI 53821 608-326-2875
 SAWABE, CHARLES M 742 VESTAL ST SAN JOSE, CA 95112 408-292-6829
 SAWABE, MARY 656 COLLEGE DR SAN JOSE, CA 95128 408-286-8982
 SAWABE, PAUL #####128 408-286-8982
 SAWABE, RUTH # Total: 109 # 408-292-6829
 SAWABE, TIM # #665 206-737-8940
 SAWABE, YO 38# Residence: 109 #22 512-322-0904
 SAWABINI, DON# Business: 0 #703 608-259-8923
 SAWABINI, EDG#####98116 206-938-0080
 SAWABINI, MIMI 5709 SW HINDS ST SEATT#####
 SAWACHI, YOUNEI 5300 PAS RCH CSTLL LOM SAWA, ZENON B #
 SAWACKE, ANDREW J 859 MARION ST SAINT# 316 S FREMONT ST 9
 SAWACKE, KIMBERLY 1616 IDAHO AVE E SAM PRAIRIE DU CHIEN, WI 53821 #
 SAWACKE, NORMAN N 5476 145TH ST N HUG# #
 SAWACKE, NORMAN N 1616 IDAHO AVE E SAM #
 SAWACKE, PAULA 5476 145TH ST N HUGO, # #
 SAWACKI, FRANK 2360 BUNKER HILL DR SAM #
 SAWACKI, SHIRLEY 2360 BUNKER HILL DR # 608-326-2875 * Residence * #
 #####

Press Esc to continue.


SAWA, ALBERTA 127 ASHLEY WAY RENO, NV 89511 702-851-2264
 SAWA, ALICJA 1701 W CERMAK RD MAYWOOD, IL 60153 708-450-0581
 SAWA, ANNA 340 ELK BLVD DES PLAINES, IL 60016 708-827-2104
 SAWA, AYAKO 1100 17TH AVE #-301 SEATTLE, WA 98122 206-325-2598
 SAWA, BAN F 19993 DERBY ST DETROIT, MI 48203 313-891-1229
 SAWA, BONNIE 9245 SHARON ST JUNEAU, AK 99801 907-789-1693
 SAWA, CAROL 1841 PALOLO AVE #-102 HONOLULU, HI 96816 808-737-6453
 SAWA, CAROLE 2839 DOLE ST HONOLULU, HI 96816 808-734-0385
 SAWA, CECELIA 27787 DEQUINDRE RD #-211 MADISON HEIGHTS, MI 48071 313-542-9122
 SAWA, CHRISTPHR 994 ALLEN RD SMITHS CREEK, MI 48074 313-329-7562
 SAWA, CLARA 5547 S NORDICA AVE CHICAGO, IL 60638 312-586-1673
 SAWA, DAWN 5768 ROOSEVELT PL GARY, IN 46410 219-887-8262
 SAWA, DIANE 75258 LA CRESTA DR PALM DESERT, CA 92211 619-773-9705
 SAWA, DIANNE 14620 156TH AVE SE RENTON, WA 98059 206-235-0321
 SAWA, DONALD 4247 RHODE ISLAND ST GARY, IN 46409 219-887-4034
 SAWA, DONALD E 5768 ROOSEVELT PL GARY, IN 46410 219-887-8262
 SAWA, DONALD J 710 MIDDLE GLEN DR GARLAND, TX 75043 214-240-0454
 SAWA, EDWARD F 3830 S HONORE ST CHICAGO, IL 60609 312-847-3904
 SAWA, EDWARD T 94-572 WAIPAHU ST WAIPAHU, HI 96797 808-671-7950
 SAWA, EUGENE 1425 2ND AVE #-62 CHULA VISTA, CA 91911 619-422-7151
 SAWA, EVELYN C 4247 RHODE ISLAND ST GARY, IN 46409 219-887-4034
 SAWA, F M 127 ASHLEY WAY RENO, NV 89511 702-851-2264
 SAWA, FIDILIA 2702 E 14TH ST PUEBLO, CO 81001 719-545-9327
 SAWA, G K 1335 SUMMIT AVE #-310 OSHKOSH, WI 54901 414-233-0020
 SAWA, GAIL 1113 S MAIN ST NECEDAH, WI 54646 608-565-2124
 SAWA, GARRET 15313 CRANBROOK AVE LAWDALE, CA 90260 310-973-6777
 SAWA, GEORGE 94-404 HENE ST WAIPAHU, HI 96797 808-677-5896
 SAWA, GLADYS 10206 BURNET AVE MISSION HILLS, CA 91345 818-893-1351
 WA, HENRY E 589 E 73RD AVE GARY, IN 46410 219-769-5129
 SAWA, HENRY T 6 WILD CHERRY LN PALOS PARK, IL 60464 708-361-6313
 SAWA, HENRY T 9838 TERRACE CT W PALOS PARK, IL 60464 708-361-6776
 SAWA, I J 9245 SHARON ST JUNEAU, AK 99801 907-789-1693
 SAWA, IDA 3145 N KEATING AVE CHICAGO, IL 60641 312-286-4723
 SAWA, JAMES Y 3434 KEPUHI ST HONOLULU, HI 96815 808-737-2604

The mark has become distinctive of the goods through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

The applicant must provide this statement supported by an affidavit or a declaration under 37 C.F.R. Section 2.20. 37 C.F.R. Section 2.41(b); TMEP section 1212.05(d).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.


Fred Mandir
Trademark Attorney
Law Office 11
(703) 308-9111 ext. 168

FM:ld

ldd

EXHIBIT

3

TTAB

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SAWATACON LIMITED

Petitioner,

v.

BRACE INTERNATIONAL, INC.

Registrant.

Cancellation No. 92032081

Registration No. 1,977,928

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS
FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO BOX
TTAB/NO FEE, COMMISSIONER FOR TRADEMARKS, 2900
CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513 ON

July 13, 2004

SHERIDAN ROSS P.C.

BY:

Bernie B. Sullivan

PERMISSIVE REQUEST TO WITHDRAW FROM REPRESENTATION

Pursuant to 37 C.F.R. §10.40(c), the undersigned attorney hereby requests permissive withdrawal from employment in connection with the representation of Petitioner Sawatacon Limited. Specifically, counsel requests permission based upon §10.40(c) because Practitioner's client knowingly and freely asserts to termination of employment, because it is unreasonably difficult for the Practitioner to carry out the employment effectively and Practitioner's client has failed to pay one or more bills rendered by the Practitioner for an unreasonable period of time. Specifically, as indicated in the attached correspondence and printout of Petitioner's outstanding balance, Petitioner has failed to pay counsel since July 15, 2003. There are five bills outstanding dating back to June 30, 2003 and totaling \$9,769.05. In addition, Petitioner has instructed counsel to take no action without his written permission but has not provided instructions in connection with the upcoming deadlines.

Counsel has taken reasonable steps to avoid foreseeable prejudice to the rights of the client by giving due notice to his client, allowing time for employment of another practitioner in delivering to client all papers and property to which the client is entitled, and complying with applicable laws and rules. Specifically, counsel provided copies of all files on November 19, 2003 and February 4, 2004, has advised the client of the upcoming deadlines on numerous occasions and has advised the client of the intent to withdraw from representation. Letters in this regard are enclosed.

07-19-2004

In view of the above, counsel requests that this request for permissive withdrawal from employment be accepted.


Further correspondence should be sent to:

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

Respectfully submitted,

SHERIDAN ROSS P.C.

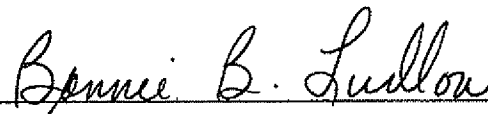
Date: 7/9/04

By: 
Attorneys for Petitioner
Sabrina C. Stavish
Robert R. Brunelli
Christopher J. Hussin
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of July, 2004, a true and complete copy of the foregoing **PERMISSIVE REQUEST TO WITHDRAW FROM REPRESENTATION** is being served by first class U.S. mail, to the following:

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada



Client Statement

Client: 4736		Sawatacon Limited					
T	Date	Item#	Bill#	Fees	Disb	Total	Balance
PMNT	6/28/2001	526006	0	-1,832.00	-61.35	-1,893.35	-1,893.35
STMT	6/28/2001	503982	3902	1,832.00	61.35	1,893.35	0.00
PMNT	7/26/2001	568539	0	-1,130.50	-334.60	-1,465.10	-1,465.10
STMT	7/26/2001	544056	4299	1,130.50	334.60	1,465.10	0.00
PMNT	9/5/2001	628322	0	-167.50	-339.45	-506.95	-506.95
STMT	9/5/2001	587613	4948	167.50	339.45	506.95	0.00
PMNT	9/19/2001	648590	0	-80.00	-2.60	-82.60	-82.60
STMT	9/19/2001	633378	5240	80.00	2.60	82.60	0.00
PMNT	10/30/2001	711521	0	-250.00	-5.00	-255.00	-255.00
STMT	10/30/2001	676138	5815	250.00	5.00	255.00	0.00
PMNT	11/20/2001	739184	0	-395.00	0.00	-395.00	-395.00
STMT	11/20/2001	723656	6134	395.00	0.00	395.00	0.00
PMNT	12/18/2001	789585	0	-320.00	0.00	-320.00	-320.00
STMT	12/18/2001	768630	6645	320.00	0.00	320.00	0.00
PMNT	1/17/2002	824882	0	-67.68	-14.32	-82.00	-82.00
STMT	1/17/2002	812608	7160	721.00	14.32	735.32	653.32
STMT	2/14/2002	853451	7561	1,157.25	0.00	1,157.25	1,810.57
STMT	3/21/2002	895699	8059	123.75	13.40	137.15	1,947.72
STMT	4/18/2002	929305	8509	96.25	0.00	96.25	2,043.97
STMT	5/16/2002	971189	8972	247.50	13.60	261.10	2,305.07
PMNT	6/12/2002	9B0045	316	-1,986.60	-13.40	-2,000.00	305.07
STMT	7/17/2002	9F2253	9816	309.00	41.58	350.58	655.65
STMT	8/16/2002	9J4659	10431	68.75	10.20	78.95	734.60
PMNT	8/28/2002	9L1374	318	-669.22	-65.38	-734.60	0.00
STMT	9/23/2002	9N2997	10943	1,705.25	19.30	1,724.55	1,724.55
AT	10/22/2002	9R1922	11477	265.00	15.67	280.67	2,005.22
STMT	11/21/2002	9V6018	11911	286.25	0.80	287.05	2,292.27
STMT	12/12/2002	9Y4819	12194	72.50	7.00	79.50	2,371.77
PMNT	1/6/2003	A22567	323	-2,329.00	-42.77	-2,371.77	0.00
STMT	1/30/2003	A25060	12894	623.50	27.40	650.90	650.90
STMT	2/25/2003	A66129	13332	146.00	28.60	174.60	825.50
STMT	3/17/2003	AA1392	13644	436.00	0.00	436.00	1,261.50
PMNT	4/7/2003	AD5614	327	-1,205.50	-56.00	-1,261.50	0.00
STMT	4/29/2003	AD5325	14275	433.00	11.80	444.80	444.80
STMT	5/19/2003	AG4265	14649	2,695.00	86.17	2,781.17	3,225.97
STMT	6/25/2003	AI9870	15167	552.00	40.20	592.20	3,818.17
PMNT	7/15/2003	AM3568	211	-3,680.00	-138.17	-3,818.17	0.00
STMT	7/16/2003	AL9257	15272	1,139.25	18.30	1,157.55	1,157.55
STMT	8/28/2003	AO8882	16042	2,006.50	18.52	2,025.02	3,182.57
STMT	9/26/2003	AR6772	16389	3,054.00	71.38	3,125.38	6,307.95
STMT	10/27/2003	AU9198	16788	3,085.50	263.77	3,349.27	9,657.22
STMT	12/12/2003	B51181	17534	0.00	0.00	0.00	9,657.22
STMT	1/14/2004	B95165	17915	0.00	0.00	0.00	9,657.22
STMT	5/18/2004	BU7168	19658	72.50	39.33	111.83	9,769.05
Total STMT				23,470.75	1,484.34	24,955.09	
Total PMNT				-14,113.00	-1,073.04	-15,186.04	
Total ADJ				0.00	0.00	0.00	
Balance				9,357.75	411.30	\$9,769.05	

SHERIDAN ROSS

A Professional Corporation

Federal I.D. No. 84-1103115

1560 BROADWAY

SUITE 1200

DENVER, COLORADO 80202-5141

Sawatacon Limited
Attn: Accounts Payable
2087 Dundas South East
Suite 102
Mississauga, Ontario
Canada L4X 2V7

Payment Terms: Within 30 Days of Receipt
Questions: Contact Sharon DiPentino
Phone: 303-863-9700
Fax: 303-863-0223
E-Mail: sdipentino@sheridanross.com

INVOICE NO: 15272

PERIOD ENDING: 6/30/03

BILLING NUMBER	FILE NUMBER FILE NAME	FEES	DISB	TOTAL
4736 - 0004	4736-1-1-1 Cancellation Action for U.S. Registration No. 1,977,928 for "SAWA" owned by Brace International, Inc.	573.50	15.20	588.70
4736 - 0006	4736-1-2 Possible Infringement on Internet of "SAWA" Trademark by Brace International, Inc.	565.75	3.10	568.85
TOTALS		1,139.25	18.30	1,157.55

CLIENT SUMMARY

BALANCE AS OF 6/25/03	3,818.17
CURRENT CHARGES	1,157.55
LESS RECEIPTS APPLIED	-3,818.17

Balance Due	1,157.55
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SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:15272

SUPPORTING DOCUMENTATION

PERIOD ENDING: 6/30/03

FILE NUMBER: 4736-1-1-1
BILLING NUMBER: 4736 -0004

Cancellation Action for U.S. Registration No. 1,977,928
for "SAWA" owned by Brace International, Inc.

PROFESSIONAL SERVICES

06/03/03	Review documents produced; work with Ms. West concerning same; work with Mr. Hussin concerning review of websites to determine infringement;	RRB
06/04/03	Update document production/correspondence;	PAW
06/09/03	Confer with Mr. Brunelli regarding results of search of web sites of Brace International and other third parties; prepare letter to Dr. Sawa summarizing same;	CJH
06/18/03	Discuss with Ms. West issues regarding cancellation action and extension of time to serve discovery;	MRD

FEEs FOR PROFESSIONAL SERVICES 573.50

DISBURSEMENTS

Copy charges thru 06/30/03 15.20

TOTAL DISBURSEMENTS \$15.20

MATTER SUMMARY

Balance As Of	6/25/03	3,818.17
Current Charges		588.70
Less Receipts Applied		3,818.17
Balance Due		588.70

MATTER TO DATE

Fee Charges Year To Date	5,459.00
Disbursements Year To Date	209.37

SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:15272

SUPPORTING DOCUMENTATION

PERIOD ENDING: 6/30/03

FILE NUMBER: 4736-1-2
BILLING NUMBER: 4736 -0006

Possible Infringement on Internet of "SAWA" Trademark
by Brace International, Inc.

PROFESSIONAL SERVICES

06/05/03	Review web sites of Brace International and other medical supply companies for infringement of SAWA mark; legal research regarding proof of infringement and initial interest confusion;	CJH
06/11/03	Revise letter to Dr. Sawa regarding results of investigation of possible infringing uses of SAWA by Brace International and other third party retailers;	CJH
06/16/03	Finalize letter to Dr. Sawa regarding Internet use of SAWA by Brace International and other third parties;	CJH
06/19/03	Work with Dr. Sawa concerning status of action; work with Mr. Hussin concerning preparation of cease and desist letter;	RRB

FEES FOR PROFESSIONAL SERVICES

565.75

DISBURSEMENTS

Postage/Mailing Charges thru 06/30/03

3.10

TOTAL DISBURSEMENTS

\$3.10

MATTER SUMMARY

Balance As Of	6/25/03	0.00
Current Charges		568.85
Balance Due		568.85

MATTER TO DATE

Fee Charges Year To Date	565.75
Disbursements Year To Date	3.10

SHERIDAN ROSS

A Professional Corporation

Federal I.D. No. 84-1103115

1560 BROADWAY

SUITE 1200

DENVER, COLORADO 80202-5141

Sawatacon Limited
Attn: Accounts Payable
2087 Dundas South East
Suite 102
Mississauga, Ontario
Canada L4X 2V7

Payment Terms: Within 30 Days of Receipt
Questions: Contact Sharon DiPentino
Phone: 303-863-9700
Fax: 303-863-0223
E-Mail: sdipentino@sheridanross.com

INVOICE NO: 16042

PERIOD ENDING: 7/31/03

BILLING NUMBER	FILE NUMBER FILE NAME	FEES	DISB	TOTAL
4736	- 0004 4736-1-1-1 Cancellation Action for U.S. Registration No. 1,977,928 for "SAWA" owned by Brace International, Inc.	1,313.00	7.80	1,320.80
4736	- 0006 4736-1-2 Possible Infringement on Internet of "SAWA" Trademark by Brace International, Inc.	693.50	10.72	704.22
TOTALS		2,006.50	18.52	2,025.02

CLIENT SUMMARY

BALANCE AS OF 7/16/03	1,157.55
CURRENT CHARGES	2,025.02

Balance Due	3,182.57
-------------	----------

SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:16042

SUPPORTING DOCUMENTATION

PERIOD ENDING: 7/31/03

FILE NUMBER: 4736-1-1-1
BILLING NUMBER: 4736 -0004

Cancellation Action for U.S. Registration No. 1,977,928
for "SAWA" owned by Brace International, Inc.

PROFESSIONAL SERVICES

07/08/03	Review file and attend to status of cancellation proceeding and testimony periods in connection with same;	CJH
07/08/03	Work with Mr. Hussin concerning cease and desist letter to counsel for Brace International;	RRB
07/14/03	Review file; phone call to opposing counsel regarding upcoming testimony period and scheduling of depositions of Dr. Sawa and Mr. Dreesch;	CJH
07/16/03	Phone call to opposing counsel regarding scheduling of depositions; prepare follow-up correspondence to opposing counsel regarding same;	CJH
07/17/03	Review correspondence from opposing counsel regarding deposition scheduling; prepare response; prepare letter to Dr. Sawa regarding availability for deposition;	CJH
07/21/03	Review file in preparation for depositions of Mr. Dreesch and Dr. Sawa; confer with Mr. Brunelli regarding same; review correspondence from Dr. Sawa regarding availability for deposition; prepare and revise response letter regarding same; prepare letter to opposing counsel regarding alternative dates for deposition; exchange correspondence with counsel regarding deposition availability and resetting of testimony periods;	CJH
07/23/03	Review correspondence from Dr. Sawa regarding deposition dates; phone call to Dr. Sawa in response; prepare correspondence to opposing counsel indicating Dr. Sawa's availability for deposition on August 6 and requesting confirmation that Mr. Dreesch was also available that day;	CJH
07/24/03	Phone call from Dr. Sawa regarding deposition scheduling;	CJH

FEES FOR PROFESSIONAL SERVICES

1,313.00

DISBURSEMENTS

Copy charges thru 07/31/03	0.80
Facsimile charges thru 07/31/03	7.00
TOTAL DISBURSEMENTS	<u>\$7.80</u>

SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:16042

MATTER SUMMARY

Balance As Of	7/16/03	588.70
Current Charges		1,320.80
Balance Due		1,909.50

MATTER TO DATE

Fee Charges Year To Date	6,772.00
Disbursements Year To Date	217.17

SHERIDAN ROSS

A Professional Corporation

Federal I.D. No. 84-1103115

1560 BROADWAY

SUITE 1200

DENVER, COLORADO 80202-5141

Sawatacon Limited
Attn: Accounts Payable
2087 Dundas South East
Suite 102
Mississauga, Ontario
Canada L4X 2V7

Payment Terms: Within 30 Days of Receipt
Questions: Contact Sharon DiPentino
Phone: 303-863-9700
Fax: 303-863-0223
E-Mail: sdipentino@sheridanross.com

INVOICE NO: 16389

PERIOD ENDING: 8/31/2003

BILLING NUMBER	FILE NUMBER FILE NAME	FEES	DISB	TOTAL
4736 - 0004	4736-1-1-1 Cancellation Action for U.S. Registration No. 1,977,928 for "SAWA" owned by Brace International, Inc.	3,054.00	11.20	3,065.20
4736 - 0006	4736-1-2 Possible Infringement on Internet of "SAWA" Trademark by Brace International, Inc.	0.00	60.18	60.18
TOTALS		3,054.00	71.38	3,125.38

CLIENT SUMMARY

BALANCE AS OF 8/28/2003	3,182.57
CURRENT CHARGES	3,125.38

Balance Due	6,307.95
-------------	----------

SHERIDAN ROSS

A Professional Corporation

Federal I.D. No. 84-1103115

1560 BROADWAY

SUITE 1200

DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:16389

SUPPORTING DOCUMENTATION

PERIOD ENDING: 8/31/2003

FILE NUMBER: 4736-1-1-1
BILLING NUMBER: 4736 -0004

Cancellation Action for U.S. Registration No. 1,977,928
for "SAWA" owned by Brace International, Inc.

PROFESSIONAL SERVICES

08/01/03	Review file for consent from opposing counsel regarding resetting of testimony periods; prepare correspondence to opposing counsel requesting availability for depositions of Dr. Sawa and Robert Dreesch; review opposing counsel's response;	CJH
08/08/03	Review file; prepare correspondence to opposing counsel regarding resetting of testimony periods and testimony deposition scheduling;	CJH
08/11/03	Review correspondence from opposing counsel regarding deposition availability;	CJH
08/12/03	Prepare third consented motion to reset testimony periods; legal research regarding taking testimony depositions by phone; confer with Mr. Brunelli regarding same; prepare letter to opposing counsel regarding resetting of testimony periods and stipulation to taking depositions by phone; review response; prepare reply	CJH
08/13/03	Revise motion to reset testimony periods; prepare notice of depositions of Dr. Sawa and Mr. Dreesch; prepare stipulation to take depositions of Dr. Sawa and Mr. Dreesch by oral examination and telephonic means; review correspondence from opposing counsel regarding stipulation and depositions scheduling; phone call to Dr. Sawa regarding same;	CJH
08/14/03	Finalize consented motion to reset testimony periods; confer with Mr. Brunelli regarding status of matter and testimony strategy; revise stipulation; prepare letter to opposing counsel regarding depositions, consented motion and stipulation; review response; prepare reply to same;	CJH
08/18/03	Review correspondence from opposing counsel regarding scheduling of depositions; prepare response;	CJH
08/20/03	Phone call from Dr. Sawa regarding status of case and deposition scheduling; exchange correspondence with opposing counsel regarding stipulation; begin reviewing documents produced by Sawatacon in preparation of testimony deposition; send copy of original SAWA application to Dr. Sawa for review;	CJH
08/20/03	Schedule court reporters for depositions of Dr. Sawa and Mr. Dreesch;	PAW
08/21/03	Continue reviewing documents produced by Sawatacon; legal research regarding grounds for cancellation of registration;	CJH

FEES FOR PROFESSIONAL SERVICES

3,054.00

DISBURSEMENTS

Facsimile charges thru 08/31/03

10.00

Continued...

SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:16389

Postage/Mailing Charges thru 08/31/03

1.20

TOTAL DISBURSEMENTS

\$11.20

MATTER SUMMARY

Balance As Of	8/28/03	1,909.50
Current Charges		3,065.20
Balance Due		4,974.70

MATTER TO DATE

Fee Charges Year To Date	9,826.00
Disbursements Year To Date	228.37

SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:16389

SUPPORTING DOCUMENTATION

PERIOD ENDING: 8/31/2003

FILE NUMBER: 4736-1-2
BILLING NUMBER: 4736 -0006

Possible Infringement on Internet of "SAWA" Trademark
by Brace International, Inc.

DISBURSEMENTS

08/15/03	In-house Lexis search	60.18
TOTAL DISBURSEMENTS		<u>\$60.18</u>

MATTER SUMMARY

Balance As Of	8/28/03	1,273.07
Current Charges		60.18
Balance Due		1,333.25

MATTER TO DATE

Fee Charges Year To Date	1,259.25
Disbursements Year To Date	74.00

SHERIDAN ROSS

A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
Attn: Accounts Payable
2087 Dundas South East
Suite 102
Mississauga, Ontario
Canada L4X 2V7

Payment Terms: Within 30 Days of Receipt
Questions: Contact Sharon DiPentino
Phone: 303-863-9700
Fax: 303-863-0223
E-Mail: sdipentino@sheridanross.com

INVOICE NO: 16788

PERIOD ENDING: 9/30/2003

BILLING NUMBER	FILE NUMBER	FILE NAME	FEES	DISB	TOTAL
4736	- 0004	4736-1-1-1 Cancellation Action for U.S. Registration No. 1,977,928 for "SAWA" owned by Brace International, Inc.	3,057.50	263.77	3,321.27
4736	- 0006	4736-1-2 Possible Infringement on Internet of "SAWA" Trademark by Brace International, Inc.	28.00	0.00	28.00
TOTALS			3,085.50	263.77	3,349.27

CLIENT SUMMARY

BALANCE AS OF 9/26/2003	6,307.95
CURRENT CHARGES	3,349.27
Balance Due	9,657.22

SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:16788

SUPPORTING DOCUMENTATION

PERIOD ENDING: 9/30/2003

FILE NUMBER: 4736-1-1-1
BILLING NUMBER: 4736 - 0004

Cancellation Action for U.S. Registration No. 1,977,928
for "SAWA" owned by Brace International, Inc.

PROFESSIONAL SERVICES

09/08/03	Begin preparing exhibit notebook for use in depositions of Dr. Sawa and Mr. Dreesch; review order suspending proceedings issued by TTAB; phone call to TTAB regarding same; prepare motion to resume proceedings in response to same;	CJH
09/09/03	Phone call to TTAB to request proceedings be resumed; revise draft motion to resume proceedings; prepare correspondence to opposing counsel regarding same; confer with Mr. Brunelli regarding same; confer with Ms. West regarding exhibit notebooks;	CJH
09/09/03	Brief conference between Ms. West and Mr. Hussin regarding deposition and preparation; assist with deposition exhibits;	PAW
09/10/03	Review deposition exhibits; prepare correspondence to opposing counsel regarding motion to resume proceedings; phone call to Dr. Sawa regarding upcoming depositions; review correspondence from Dr. Sawa; review file; prepare response letter to Dr. Sawa;	CJH
09/11/03	Confer with Ms. Stavish regarding response letter to Dr. Sawa; revise letter to Dr. Sawa based on same;	CJH
09/11/03	Finalize transmittals of exhibits;	PAW
09/12/03	Set up conference calls for depositions; phone call to Dr. Sawa regarding letter regarding status; confer with Ms. Stavish regarding same; phone call to opposing counsel regarding settlement; phone call from Dr. Sawa regarding deposition; review correspondence from Dr. Sawa regarding deposition; prepare correspondence to opposing counsel regarding deposition;	CJH
09/12/03	Work with Mr. Hussin on deposition settlement strategy;	LDH
09/15/03	Brief conference between Ms. West and Mr. Hussin regarding settlement; telephone calls to court reporters in Toronto and Atlanta regarding deposition cancellation; update filing;	PAW
09/16/03	Review correspondence from Dr. Sawa regarding deposition; prepare response to same;	CJH

FEES FOR PROFESSIONAL SERVICES

3,057.50

DISBURSEMENTS

09/23/03	Federal Express	23.57
09/23/03	Federal Express	23.57
09/23/03	Federal Express	22.61

Continued...

SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:16788

09/24/03	In-house Lexis search	2.28
	Copy charges thru 09/30/03	186.60
	Facsimile charges thru 09/30/03	2.00
	Telephone charges thru 09/30/03	3.14
	TOTAL DISBURSEMENTS	\$263.77

MATTER SUMMARY

Balance As Of	9/26/03	4,974.70
Current Charges		3,321.27
Balance Due		8,295.97

MATTER TO DATE

Fee Charges Year To Date	12,883.50
Disbursements Year To Date	492.14

SHERIDAN ROSS
A Professional Corporation

Federal I.D. No. 84-1103115
1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

Sawatacon Limited
INVOICE NO:16788

SUPPORTING DOCUMENTATION

PERIOD ENDING: 9/30/2003

FILE NUMBER: 4736-1-2
BILLING NUMBER: 4736 - 0006

Possible Infringement on Internet of "SAWA" Trademark
by Brace International, Inc.

PROFESSIONAL SERVICES

09/12/03 Review of strategy with respect to opposition and letter sent by Dr. SCS
Sawa;

FEES FOR PROFESSIONAL SERVICES

28.00

MATTER SUMMARY

Balance As Of	9/26/03	1,333.25
Current Charges		28.00
Balance Due		1,361.25

MATTER TO DATE

Fee Charges Year To Date	1,287.25
Disbursements Year To Date	74.00

DAVID F. ZINGER
TODD P. BLAKELY
GARY J. CONNELL
SABRINA C. STAVISH
JOSEPH E. KOVARIK
SUSAN PRYOR WILLSON
LEWIS D. HANSEN
ROBERT R. BRUNELLI
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CHRISTOPHER J. HUSSIN
MARK L. YASKANIN
MARY BREEN SMITH
CRAIG W. MUELLER
PAUL S. CHA
THOMAS J. OSBORNE, JR.

SHERIDAN ROSS
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ATTORNEYS AND COUNSELORS AT LAW

1560 BROADWAY
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DENVER, COLORADO 80202-5141

TELEPHONE (303) 863-9700
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E-MAIL: srlaw@sheridanross.com

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KERMITH F. ROSS
1910-1986

OF COUNSEL
PHILIP H. SHERIDAN
CRAIG C. GROSETH

TECHNICAL SPECIALISTS
DENNIS J. DUPRAY, Ph.D.
ANGELA DALLAS SEBOR, Ph.D.

July 9, 2004

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

VIA FACSIMILE

Re: Cancellation Proceeding No. 92032081;
Our File No.: 4736-1-1-1

Dear Dr. Sawa:

Further to your letter dated July 8, 2004, we are withdrawing from representation of Sawatacon Limited in connection with the pending cancellation proceeding against Brace International, Inc. Please note the deadline of July 13, 2004 to submit Sawatacon's testimony in the cancellation. If testimony is not submitted, Sawatacon will lose the cancellation and Brace International's trademark registration will remain valid.

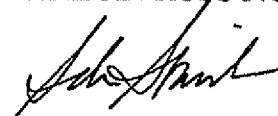
Enclosed is a copy of the Motion for our firm to withdraw from representation with your consent. Upon filing of this Motion, we will undertake no further work on your behalf and conclude our representation of your company, Sawatacon Limited.

As we discussed, we cannot continue to represent Sawatacon Limited in connection with this matter without payment of the outstanding fees and the further fees that the cancellation requires. However, I am willing to forego the outstanding fees owed by Sawatacon Limited after withdrawal from representation.

We have previously sent you copies of all outstanding files and I will forward any further correspondence that I receive to your attention. Again, if you are interested in pursuing the Cancellation proceeding, please keep in mind the deadline of July 13, 2004 to provide testimony in the case. Otherwise, you may want to consider withdrawing the cancellation to avoid sanctions.

Sincerely,

SHERIDAN ROSS P.C.


Sabrina C. Stavish

SCS/bbl

Enclosure

J:\4736-1-1-1\let-sawa-21.wpd

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SAWATACON LIMITED)

Petitioner,)

v.)

BRACE INTERNATIONAL, INC.)

Registrant.)

Cancellation No. 92032081

Registration No. 1,977,928

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS
FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO BOX
TTAB/NO. FEE, COMMISSIONER FOR TRADEMARKS, 2900
CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513 ON

SHERIDAN ROSS P. C.

BY _____

PERMISSIVE REQUEST TO WITHDRAW FROM REPRESENTATION

Pursuant to 37 C.F.R. §10.40(c), the undersigned attorney hereby requests permissive withdrawal from employment in connection with the representation of Petitioner Sawatacon Limited. Specifically, counsel requests permission based upon §10.40(c) because Practitioner's client knowingly and freely asserts to termination of employment and Practitioner's client has failed to pay one or more bills rendered by the Practitioner for an unreasonable period of time. Specifically, as indicated in the attached correspondence and printout of Petitioner's outstanding balance, Petitioner has failed to pay counsel since July 15, 2003. There are five bills outstanding dating back to June 30, 2003 and totaling \$9,769.05. In addition, Petitioner has instructed counsel to take no action without his written permission but has not provided instructions in connection with the upcoming deadlines.

Counsel has taken reasonable steps to avoid foreseeable prejudice to the rights of the client by giving due notice to his client, allowing time for employment of another practitioner in delivering to client all papers and property to which the client is entitled, and complying with applicable laws and rules. Specifically, counsel has provided copies of all files, has advised the client of the upcoming deadlines on numerous occasions and has advised the client of the intent to withdraw from representation. Letters in this regard are enclosed.

In view of the above, counsel requests that this request for permissive withdrawal from employment be accepted.

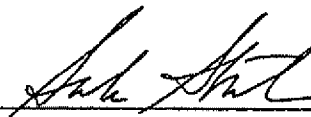
Further correspondence should be sent to:

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

Respectfully submitted,

SHERIDAN ROSS P.C.

Date: 7/9/04

By: 
Attorneys for Petitioner
Sabrina C. Stavish
Robert R. Brunelli
Christopher J. Hussin
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2004, a true and complete copy of the foregoing **PERMISSIVE REQUEST TO WITHDRAW FROM REPRESENTATION** is being served by first class U.S. mail, to the following:

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

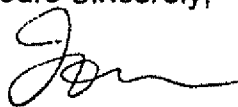
July 8, 2004

Sabrina C. Stavish
Sheridan Ross
1560 Broadway, Suite 1200
Denver, Colorado
80202-5141

Dear Sabrina,

Confirming our telephone conversation I would refer you to my letter dated May 7, 2004 stating that there should be no proceeding without my written consent. As well it is my understanding from that conversation that any outstanding fees would be written off.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Tom' or 'Thomas', written in a cursive style.

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S. (c)

DAVID F. ZINGER
TODD P. BLAKELY
GARY J. CONNELL
SABRINA C. STAVISH
JOSEPH E. KOVARIK
SUSAN PRYOR WILLSON
LEWIS D. HANSEN
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1560 BROADWAY
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E-MAIL srlaw@sheridanross.com

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OF COUNSEL
PHILIP H. SHERIDAN
CRAIG C. GROSETH

TECHNICAL SPECIALISTS
DENNIS J. DUPRAY, Ph.D.
ANGELA DALLAS SEBOR, Ph.D.

June 3, 2004

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

VIA FACSIMILE

Re: Cancellation Proceeding No. 92032081;
Our File No.: 4736-1-1-1

Dear Dr. Sawa:

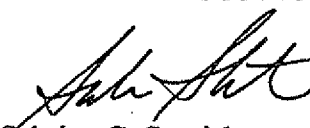
I am in receipt of your letter dated May 7, 2004 indicating that we should not proceed with anything in regards to Cancellation Action 92032081 without your further written permission. I am writing to let you know that the testimony period in the case is due to open on June 13, 2004. The testimony period will close July 13, 2004. If no action is taken by Sawatacon during this testimony period, Sawatacon will not be successful in the Cancellation proceeding as submitting testimony is necessary to prove its case against Brace International, Inc.

Please let me know if you have obtained alternative counsel on this matter. If we are not instructed to take any testimony in the Cancellation proceeding during the testimony period, our firm will need to withdraw from representation of Sawatacon Limited.

Please do not hesitate to call to discuss various options at your earliest convenience.

Sincerely,

SHERIDAN ROSS P.C.


Sabrina C. Stavish

SCS/bbl

J:\4736-1-1-1\Net-sawa -20 .wpd

4726-1-1-1

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)
Doctor of Chiropractic

RECEIVED

MAY 18 2004

SHERIDAN, ROSS

May 7, 2004

Sabrina C. Stavish
Sheridan Ross
1560 Broadway, Suite 1200
Denver, Colorado
80202-5141

Dear Sabrina

Re: Cancellation # 92032081

Please do not proceed with anything in regards to this matter without my written permission.

Yours Sincerely,



Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S. (c)

SHERIDAN ROSS

A Professional Corporation

ATTORNEYS AND COUNSELORS AT LAW

1560 BROADWAY
SUITE 1200
DENVER, COLORADO 80202-5141

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CRAIG C. GROSETH

TECHNICAL SPECIALISTS
DENNIS J. DUPRAY, Ph.D.
ANGELA DALLAS SEBOR, Ph.D.

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MIRIAM DRICKMAN TRUDELL
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CHRISTOPHER J. HUSSIN
MARK L. YASKANIN
MARY BREEN SMITH
CRAIG W. MUELLER
PAUL S. CHA
THOMAS J. OSBORNE, JR.

April 28, 2004

VIA FACSIMILE

Dr. Thomas M. Sawa
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

Re: Cancellation Action No. 92032081 Against Brace International, Inc.;
Our File No. 4736-1-1-1

Dear Dr. Sawa:

Enclosed please find a copy of a Order from the Trademark Trial and Appeal Board resetting the testimony and other trial periods in the above-referenced opposition proceeding. As you can see, we will need to obtain testimony including your deposition prior to the deadline of July 13, 2004. Please call me at your earliest convenience to discuss this deposition.

Sincerely,

SHERIDAN ROSS P.C.



Sabrina C. Stavish

SCS/bbl
Enclosure
J:\4736\1-1-1\Net-sawa-19.wpd

File 4736-1-1-1

SHERIDAN ROSS

A Professional Corporation

ATTORNEYS AND COUNSELORS AT LAW

1560 BROADWAY

SUITE 1200

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ROBERT R. BRUNELLI
DOUGLAS W. SWARTZ
BRUCE A. KUGLER
BRENT P. JOHNSON
DANA HARTJE CARDWELL
BENJAMIN B. LIEB
BRADLEY M. KNEPPER
MIRIAM DRICKMAN TRUDELL
SCOTT R. BIALECKI
KENNETH C. WINTERTON
ROBERT D. TRAVER, Ph.D.
CHRISTOPHER J. HUSSIN
MARK L. YASKANIN
MARY BREEN SMITH
CRAIG W. MUELLER
PAUL S. CHA
THOMAS J. OSBORNE, JR.

March 10, 2004

Dr. Thomas M. Sawa
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

Re: Use of "SAWA" in Connection with Website of
Brace International, Inc.;
Our File Nos.: 4736 and 4736-1-1-1

Dear Dr. Sawa:

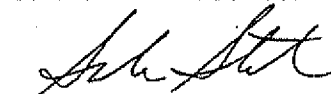
Further to your letter of February 6, 2004 and my letter dated February 24, 2004, enclosed are copies of all outstanding bills of Sawatacon Limited. I have amended these bills to a format which shows the specific time entries and dollar amounts for all work conducted. If you have any questions regarding these bills, please contact me. The current outstanding balance is \$9,657.22.

I note that we have not received any payment from you since July 15, 2003. As the cancellation proceeding remains pending with further work needed to pursue the cancellation, we need to resolve the issue of these outstanding bills as well as consider the additional costs that will be incurred in connection with proving the cancellation. If we cannot resolve the issue of the outstanding bills and form a plan for proceeding with the Petition for Cancellation, it will be necessary for us to withdraw from representation of Sawatacon Limited. As you know, the suspension expired March 4, 2004. The Trademark Trial and Appeal Board will eventually reset the trial dates in the case and we will need to take action to move the Petition for Cancellation forward. As we are still uncertain as to how you would like to proceed, we will not take any action to have the trial dates reset but will merely wait until the TTAB resets them on their own.

Please call to discuss the above.

Sincerely,

SHERIDAN ROSS P.C.



Sabrina C. Stavish

SCS/bbl
Enclosures
J:\4736\lct-sawa re bills.wpd

Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)
Doctor of Chiropractic

File # unknown
RECEIVED

FEB 18 2004

SHERIDAN, ROSS

February 6, 2004

Mr. Christopher Hussin
c/o Sheridan Ross
1560 Broadway, Suite 1200
Denver, CO 80202-5141

Dear Christopher:

I am in receipt of your package on February 5, 2004 and am somewhat confused and concerned as to what the possible infringement package is about. Would you please provide for me as to what this is and under whose authority that this was directed.

Please also give me a status report as to where the Trademark matter stands as of now and what the Trademark Tribunals' position is in regards to this.

Also, I have received your invoice since December and would request a detailed accounting for the billings in the last 3 months.

Your immediate response to this letter is requested.

Yours sincerely,



Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S. ©

CC: Sabrina Stavish
Robert Brunelli

SHERIDAN ROSS

A Professional Corporation

ATTORNEYS AND COUNSELORS AT LAW

1560 BROADWAY

SUITE 1200

DENVER, COLORADO 80202-5141

TELEPHONE (303) 863-9700

FACSIMILE (303) 863-0223

E-MAIL srlaw@sheridanross.com

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TRADEMARKS
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KERMITH F. ROSS
1910 - 1986

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CRAIG C. GROSETH

TECHNICAL SPECIALISTS
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SUSAN PRYOR WILLSON
LEWIS D. HANSEN
ROBERT R. BRUNELLI
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ROBERT D. TRAVER, Ph.D.
CHRISTOPHER J. HUSSIN
MARK L. YASKANIN
MARY BREEN SMITH
CRAIG W. MUELLER
PAUL S. CHA

February 4, 2004

Dr. Thomas M. Sawa
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

FEDERAL EXPRESS

Re: Cancellation Action No. 92032081 Against Brace International, Inc.;
Our File No. 4736-1-1-1

Dear Dr. Sawa:

We have reviewed the file for the above-referenced opposition and believe you have a complete copy of that opposition file. For the sake of completeness, enclosed please find copies of the following files in our office:

Our File No. 4736-1-1 regarding Third Party Use of and Trademark Registration for "SAWA" by Brace International;

Our File No. 4736-1-2 regarding Possible Infringement on Internet for use of "SAWA" Trademark by Brace International, Inc.; and

Our File No. 4736-2 regarding United States Trademark Application for "SAWA" in the Name of Sawatacon Limited.

You should now have complete copies of all of our files in connection with our representation. If you have any questions or need anything further, however, please do not hesitate to contact us.

Page 2

Sincerely,

SHERIDAN ROSS P.C.

Chris Hume

Christopher J. Hussin

Enclosures

Robert Brunelli

J:\4736\11-11-11\et-sawa-18.wpd

ORIGIN ID: TEXA (303) 863-9700
DAVID HARTMAN
SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER, CO 80202

SHIP DATE: 04FEB04 1/1
SYSTEM #0730283 / CAFE2165
ACCOUNT #: 080221177
ACTUAL WGT: 3 LBS MAN-WGT

TO: DR. THOMAS M. SAWA (905) 238-3233
SAWATACON LIMITED
2087 DUNDAS STREET E. UNIT 102
MISSISSAUGA, ON L4X 1M2

6183 2081 1339

6183 2081 1339

REF: CJH #4736-1-1-1

INTL PRIORITY

TRK#

6183 2081 1339 FORM 0430

YYZ AA

L4X 1M2-ON-CA

N4 YZRA



Pat # 156148 NRIT 2-02 :

SHERIDAN ROSS

A Professional Corporation

ATTORNEYS AND COUNSELORS AT LAW

1560 BROADWAY

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KERMITH F. ROSS
1910 - 1986

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MIRIAM DRICKMAN TRUDELL
SCOTT R. BIALECKI
KENNETH C. WINTERTON
ROBERT D. TRAVER, Ph.D.
CHRISTOPHER J. HUSSEN
MARK L. YASKANIN
MARY B. SMITH

November 19, 2003

Dr. Thomas M. Sawa
Sawatacon Limited
2087 Dundas Street, E., Unit 102
Mississauga, Ontario
L4X 1M2 Canada

VIA FEDERAL EXPRESS

Re: Cancellation Action No. 92032081 Against Brace
International, Inc.;
Our File No. 4736-1-1-1

Dear Dr. Sawa:

Enclosed as you requested is a copy of your complete file for your review.

I understand your frustration with the cancellation process, but some of the delays are inherent in the process. The Trademark Trial and Appeal Board tends to provide every opportunity to a defendant in a cancellation proceeding. In addition to the inherent delays, you have wanted to limit expenditures on the matter and as a result we have not aggressively pursued the cancellation by proceeding with depositions that would move the case forward. We can take a more aggressive approach, but the costs associated with such an approach will be much higher. Also, we have repeatedly discussed the fact that litigation in court would be a stronger approach. However, you have expressed the concerns regarding costs and have not wanted to proceed with court action.

In sum, we have been trying to move the matter forward with the least amount of attorney time possible. If you would like to work with different counsel or take a different approach, please let us know. However, since Don Joy is selling your product, the low cost approach we are using appears reasonable. If you believe that a more aggressive approach would increase your sales, a different course of action should be considered.

Currently the status of the case is as follows:

Page 2

We look forward to your further instructions in this matter.

SHERIDAN ROSS P.C.

Christopher J. Hussin

J:\47361-11-11-1\et-sawa-17.wpd

EXHIBIT

4

February 10, 2005

United States Department of Commerce
Trademark Office
Trademark Trial and Appeal Board
Patent and Trademark Office
2900 Crystal Dr.
Arlington, VA
22202-3513

Re: Cancellation No. 32,081
Registration No. 1,977,928
Sawatacon Ltd. (Petitioner) v. Brace International Inc. (Registrant)

I am the Petitioner in the above captioned matter. Would you please provide me with a status report in the about matter. Would you also please provide me with information as to whether or not any items are still outstanding in this matter in preparation for a Hearing. As indicated in previous correspondence to your Office, I will be personally representing Sawatacon in my capacity as President and Director of Sawatacon. Kindly provide the above requested information forthwith to the below noted address. In addition, please provide any at all correspondence and notices in this matter to the under-signed below.

Thank you

Yours Sincerely,



Dr. Thomas M. Sawa, B.Sc., D.C., F.C.C.S.S.(c)

2087 Dundas St. E. Unit 102
Mississauga, ON
L4X 1M2



03-01-2005

EXHIBIT

5

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: August 17, 2004

Cancellation No. 92032081

SAWATACON LIMITED

v.

BRACE INTERNATIONAL, INC.

Frances S. Wolfson, Interlocutory Attorney:

On July 26, 2004, petitioner's counsel former counsel was allowed to withdraw and petitioner was allowed time to appoint new counsel or advise the Board that petitioner desires to represent itself.

On August 12, 2004, Dr. Thomas M. Sawa filed a request to represent "himself" but Dr. Sawa does not indicate that he is authorized to represent petitioner. Inasmuch as petitioner is a corporation or other legal entity, Dr. Sawa must indicate his capacity to act on behalf of the corporation. See Trademark Rules 2.119(e) and 10.14(e)(2).

Moreover, Dr. Sawa's communication does not indicate proof of service of a copy of same on counsel for applicant as required by Trademark Rule 2.119.

Accordingly, Dr. Sawa is allowed until TWENTY DAYS from the mailing date of this order to file a statement indicating his capacity to act on behalf of Sawatacon

Cancellation No. 92032081

Limited. Dr. Sawa is allowed the same TWENTY DAYS to serve a copy of his August 12, 2004 communication on counsel for applicant and to file proof of service of same with the Board.

Trial dates, including the close of discovery, are reset as indicated below.

DISCOVERY PERIOD TO CLOSE: **November 30, 2004**

30-day testimony period for party in the position of plaintiff to close: **February 28, 2005**

30-day testimony period for party in the position of the defendant to close: **April 29, 2005**

15-day rebuttal period for party in the position of the plaintiff to close: **June 13, 2005**

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within **thirty days** after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

GENERAL INFORMATION

Trademark Rule 2.119 requires that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or

Cancellation No. 92032081

on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice and is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.¹

¹ The Trademark Trial and Appeal Board Manual of Procedure (TBMP) (Stock No. 903-022-00000-1) is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (Telephone (202) 512-1800). The TBMP is also available on the World Wide Web at <http://www.uspto.gov>.

Cancellation No. 92032081

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

New Developments at the Trademark Trial and Appeal Board

- Files of TTAB proceedings can now be examined using TTAB Vue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format. Papers filed prior to January 2003 may not have been scanned. Unscanned papers are available for public access at the TTAB. For further information on file access, call the TTAB at (703) 308-9330.
- Parties should also be aware of recent changes in the rules affecting trademark matters, including the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) (www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003) (www.uspto.gov/web/offices/com/sol/notices/68fr48286.pdf).
- The second edition (June 2003) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at www.uspto.gov/web/offices/dcom/ttab/tbmp/.

EXHIBIT

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 19, 2005

Cancellation No. 92032081

SAWATACON LIMITED

v.

BRACE INTERNATIONAL, INC.

Frances S. Wolfson, Interlocutory Attorney:

This case now comes before the Board for consideration of respondent's motion (filed January 27, 2005) for an order to show cause why judgment should not be entered against petitioner for its failure to comply with the Board's order dated August 17, 2004.

Office records indicate no response thereto.¹ When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. See Trademark Rule 2.127(a), and TBMP §502.04 (2d ed. rev. 2004). In view thereof, the motion is treated as conceded and petitioner is

¹ Petitioner's communication (filed March 1, 2005) has not been considered because it does not indicate proof of service of a copy of same on counsel for respondent as required by Trademark Rule 2.119 and because it merely asks for a status update. To the extent petitioner intended the communication to serve as its response to respondent's motion, we have not considered it because it was not timely filed. See Trademark Rule 2.127(a). Further, we note that given the Board's large docket responsibilities, the Board does not send written status reports to parties. As noted in our order dated August 17, 2004, parties can ascertain the status of their case through TTABVUE.

Cancellation No. 92032081

hereby ordered to show cause why its failure to comply with the Board's order dated August 17, 2004 should not be considered a concession of the case.

Petitioner is allowed until thirty days from the mailing date of this order to respond thereto.

Proceedings herein are otherwise suspended.

EXHIBIT

7

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: June 3, 2005

Cancellation No. 92032081

SAWATACON LIMITED

v.

BRACE INTERNATIONAL, INC.

Frances S. Wolfson, Interlocutory Attorney:

On April 19, 2005, petitioner was allowed time to show why its failure to respond to the Board's order of August 17, 2005 should not be deemed a concession of the case.

Office records indicate no response has been filed to the Board's April 19, 2005 order.

Accordingly, judgment is hereby entered against petitioner and the petition to cancel is denied.

***By the Trademark Trial
and Appeal Board***

EXHIBIT

8

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 31, 2005

Cancellation No. 92032081

SAWATACON LIMITED

v.

BRACE INTERNATIONAL, INC.

Before Quinn, Grendel and Kuhlke, Administrative Trademark Judges.

By the Board:

This case now comes up for consideration of petitioner's submissions filed July 26, 2004, June 1, 2005 and July 11, 2005, following entry of judgment against petitioner.

By way of background, this petition for cancellation was filed on June 4, 2001, on the ground that respondent, petitioner's exclusive licensee of the "SAWA" orthopedic brace patent,¹ fraudulently obtained its registration² for the mark SAWA for an "orthopedic brace." Respondent filed an answer to the petition, wherein respondent admits that it entered into an licensing agreement with petitioner for the

¹ U.S. Patent No. 4735198, issued April 5, 1988.

² Reg. No. 1977928 registered June 4, 1996, Section 8 affidavit accepted.

manufacture and sale of orthopedic braces covered by petitioner's patent, but otherwise denies the salient allegations in the complaint.

Following several extensions of discovery and trial dates based on petitioner's consented requests for extension, and a period wherein the case was suspended for settlement, proceedings resumed on April 13, 2004, commencing with petitioner's testimony period.³ On July 13, 2004, via certificate of mailing, petitioner's counsel filed a request to withdraw its representation. The Board granted counsel's request on July 26, 2004, and suspended proceedings to allow petitioner to appoint new counsel or advise the Board that it wished to represent itself. No testimony had been taken or other evidence filed in the case before counsel's request to withdraw was filed.

On August 12, 2004, Dr. Thomas Sawa advised the Board that he would represent petitioner. Dr. Sawa's letter did not show proof of service of a copy of same on counsel for respondent. On August 17, 2004, proceedings were resumed and trial dates reset, including an extension of petitioner's testimony period. The requirements of Trademark Rules 2.119(a) and (b) were explained therein, and Dr. Sawa was ordered to serve a copy of his letter on

³ The order issued during the period after discovery had closed but before petitioner's testimony period was set to open (which was June 14, 2004).

respondent's counsel and to advise the Board of his capacity to represent petitioner.

On January 27, 2005, respondent filed a motion for an order to show cause why judgment should not be entered against petitioner on the ground that petitioner had failed to comply with the Board's August 17, 2004 order. On April 19, 2005, the Board granted respondent's motion as conceded, and allowed petitioner thirty days to show cause. On June 3, 2005, having received no response from petitioner, judgment was entered against petitioner.

Petitioner's July 26, 2004 Letter

The Board has recently been made aware of a letter filed by petitioner on July 26, 2004. The letter was filed with the Office of the Commissioner for Trademarks and not the Board, resulting in the failure of the letter to be associated with the proceeding file until now. See TBMP § 106 (2d ed. rev. 2004). The letter includes a copy of the purported licensing agreement between the parties.

To the extent petitioner intends to introduce the licensing agreement as evidence in the case, it is inadmissible.⁴ First, the letter and the attached agreement were filed after the close of petitioner's testimony period,

⁴ We also note that the filing does not indicate that a copy was served on respondent's counsel. Accordingly, we would not be compelled to consider it, even were it to have been timely filed. See Trademark Rule 2.119(a).

thereby making the introduction of the purported evidence untimely. See Trademark Rule 2.121(a)(1) ("No testimony shall be taken except during the times assigned, unless by stipulation of the parties approved by the Board, or, upon motion, by order of the Board.") Further, the licensing agreement is inadmissible because it was not properly introduced by means of a testimony deposition. See, gen., TBMP §§ 703.01(a) and 704 (2d ed. rev. 2004).

Accordingly, we find no reason to vacate our order of judgment against petitioner on the basis of petitioner's July 26, 2004 letter.

Petitioner's June 1, 2005 Letter

As stated above, on April 19, 2005, the Board ordered petitioner to show cause why judgment should not be entered against petitioner; following petitioner's failure to respond, judgment was entered on June 3, 2005, against petitioner. The record now reflects that, in point of fact, petitioner responded to the Board's show cause order on June 1, 2005.

Although petitioner's June 1, 2005 letter was not associated with the file until now, we find no reason to vacate our order of judgment. Petitioner's response is untimely.⁵ Nor does it bear proof that a copy of same was served on counsel for respondent. Significantly, the

⁵ Petitioner's response was due by May 19, 2005.

response does not address the merits of the Board's show cause order. To the contrary, petitioner merely notes that it has not contacted respondent, that it has already submitted whatever information it considers pertinent to the case, and that petitioner awaits a final decision by the Board. We have carefully reviewed our records and determined that all petitioner's submissions have been duly entered herein. We find no reason to vacate our order of judgment against petitioner on the basis of petitioner's June 1, 2005 letter.

Petitioner's July 11, 2005 Letter

After this proceeding was dismissed, petitioner filed a letter on July 11, 2005, together with copies of mailing receipts from the Canadian postal service and copies of a letter from respondent's counsel (hereinafter the "attorney letter"). The attorney letter and the envelope in which it arrived are attached to petitioner's letter. The attorney letter appears to relate to a different proceeding and has no bearing on this case.

Petitioner states that it has received no other correspondence from respondent's counsel. It may be that instead of the motion for an order to show cause, respondent mistakenly sent petitioner the attorney letter. In view thereof, we have treated petitioner's submission as a

request for relief from final judgment under Fed. R. Civ. P. 60(b) on the grounds of excusable neglect.

Fed. R. Civ. P. 60(b), as made applicable by Trademark Rule 2.116(a), provides, in part, that a party may be relieved from judgment upon a showing of "mistake, inadvertence, surprise, or excusable neglect" or for "any other reason justifying relief from the operation of the judgment." Relief from a final judgment is an extraordinary remedy to be granted only in exceptional circumstances and lies within the sound discretion of the Board. See TBMP § 544 (2d ed. rev. 2004), citing *Djeredjian v. Kashi Co.*, 21 USPQ2d 1613 (TTAB 1991).

Petitioner's request for relief from final judgment again suffers from the technical defect in failing to satisfy proof of service requirements. Aside from the technical defect, petitioner's request does not address the issue of excusable neglect or explain why petitioner believes the judgment should be vacated.

Instead, petitioner first inquires why the Board issued judgment against it without an oral hearing. The only reference to a hearing (judicial or oral) appears in petitioner's June 1, 2005 letter, wherein petitioner states that it is "prepared to have a hearing so this matter can be clarified." Such statement is insufficient to qualify as a

motion for an oral hearing on the case.⁶ Accordingly, the Board did not err in failing to hold an oral hearing on the case.

Secondly, petitioner submits copies of receipts from the Canadian postal service, showing that petitioner mailed its June 1, 2005 letter to the Board on May 17, 2005. It is, however, the date of receipt of petitioner's letter in the USPTO (i.e., June 1, 2005) that is considered to be the filing date of the paper, not the date of deposit in the Canadian mail. See Trademark Rules 2.195 and 2.197. Since petitioner's response was due by May 19, 2005, it is untimely, even though petitioner may have deposited the response with the Canadian postal service on May 17, 2005.

Accordingly, petitioner has not shown that it should be relieved from the Board's order of judgment against it on the ground of excusable neglect.

Petitioner's request for relief from the final judgment under Fed. R. Civ. P. 60(b) is denied; and the petition to cancel stands denied.

-oOo-

⁶ To the extent the statement would qualify as a motion for an oral hearing, it was premature. This case was decided prior to the opening of the briefing stage of the proceeding. An oral hearing on the case will not be held except on written request filed by a party not later than ten days after the due date for filing the last reply brief in the proceeding. See TBMP § 802.02 (2d ed. rev. 2004).

EXHIBIT

9



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

REGISTRATION NO: 1977928 SERIAL NO: 74/627776 MAILING DATE: 03/20/2007
REGISTRATION DATE: 06/04/1996
MARK: SAWA
REGISTRATION OWNER: BRACE INTERNATIONAL, INC.

CORRESPONDENCE ADDRESS:

H. JAY SPIEGEL
H. JAY SPIEGEL & ASSOCIATEDS
P.O. BOX 11
MOUNT VERNON, VA 22121

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

NOTICE OF RENEWAL

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1059.

ACCORDINGLY, THE REGISTRATION IS RENEWED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):

010.

MA, MACY L
PARALEGAL SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

**PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION**

ORIGINAL

REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION

I) SECTION 8: AFFIDAVIT OF CONTINUED USE

The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration.

Failure to file the Section 8 Affidavit will result in the cancellation of the registration.

II) SECTION 9: APPLICATION FOR RENEWAL

The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059, at the end of each successive 10-year period following the date of registration.

Failure to file the Application for Renewal will result in the expiration of the registration.

NO FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS WILL BE SENT TO THE REGISTRANT BY THE PATENT AND TRADEMARK OFFICE. IT IS RECOMMENDED THAT THE REGISTRANT CONTACT THE PATENT AND TRADEMARK OFFICE APPROXIMATELY ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.